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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE THIRD INSTALMENT OF "F1" CLAIMS

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Introduction

1. This is the fourth report submitted to the Governing Council of the United Nations Compensation Commission (the "Commission") pursuant to article 38(e) of the Provisional Rules for Claims Procedure (the "Rules")1/ by the Panel of Commissioners appointed by the Governing Council at its twenty-first session on 22-23 July 1996 to review certain category "F" claims from Governments ("F1" claims)(the "Panel"). This report deals with the third instalment of "F1" claims.

2. The third instalment of claims was presented to the Panel in accordance with article 32 of the Rules on 22 July 1998. The instalment consists of the following twenty-four claims (the "Claims") filed by fourteen Governments (the "Claimants") for a total of approximately 39.5 million United States dollars ("US$"). The amount of compensation sought is indicated in parentheses after every claim.2/

(a) Australia: Trade Commission (US$173,482) and Overseas Property Group (US$108,856);

(b) The Republic of Austria: Federal Ministry of Foreign Affairs (US$3,010) and Office of the Federal President (US$139,618);

(c) The People's Republic of Bangladesh: Ministry of Labour and Manpower (US$12,012,488);

(d) The Republic of Finland: Ministry of Foreign Affairs (US$660,069);

(e) The Federal Republic of Germany: Federal Ministry for Research and Technology (US$1,928,910); Hessian Ministry for Women, Labour and Social Affairs (US$7,961); Government of Bavaria (US$15,536) and Federal Office of Administration (US$178,462);

(f) Ireland: Department of Defence (US$464,755);

(g) The Italian Republic: Institute for Foreign Trade (US$35,401);

(h) The Lebanese Republic: Ministry of Foreign Affairs (US$207,495);

(i) The Russian Federation: Ministry of Foreign Affairs (US$6,878,200);

(j) The Kingdom of Spain: Ministry of Foreign Affairs (US$702,258);

(k) The Syrian Arab Republic: Central Bureau of Statistics (US$2,143,997) and Foreign Ministry (Embassy of Syrian Arab Republic in Kuwait) (US$345,207);

(l) The Kingdom of Thailand: (US$6,248,909);

(m) The Kingdom of Great Britain and Northern Ireland: Commonwealth War Graves Commission (US$68,323); Department of Social Security (US$107,487) and Ministry of Defence (US$4,307,899); and

(n) The United States of America: Department of Defense (US$413,214 plus interest); Department of Health and Human Services (US$1,759,049 plus interest) and United States Information Agency (US$624,206 plus interest).

I. PROCEEDINGS

3. In accordance with article 16 of the Rules, the Executive Secretary of the Commission reported the Claims to the Governing Council in his reports of 31 January 1997, 30 April 1997, 31 January 1998, 30 April 1998 and 31 July 1998. These reports were circulated to all Governments and international organizations that had filed claims before the Commission and to the Government of the Republic of Iraq ("Iraq"). A number of Governments, including Iraq, submitted additional information and views on the reports.

4. On 24 July 1998, the Panel issued procedural orders informing the Claimants that their claims were under review and classifying the Claims. The Panel determined that, in accordance with article 38(c) of the Rules, it would review the Claims within 180 days.

5. In the course of the preliminary review of the Claims, it was noted that several Claimants sought compensation for costs incurred in evacuating individuals, for payments made to reimburse Government employees for the loss of personal property, and for support payments made to individuals who had lost their source of income as a result of Iraq's invasion and occupation of Kuwait. As the individuals concerned might themselves have filed individual claims with the Commission in categories "C" and "D" for the same losses, the Panel was concerned that the Claims might be seeking compensation for losses that were the subject of category "C" or "D" claims.3/

6. To avoid multiple recovery of compensation across categories, the procedural orders issued on 24 July 1998 requested those Claimants seeking compensation for the evacuation of individuals, for reimbursements for individuals' losses of personal property or for support payments, to provide identification information which would enable the Panel to ascertain that compensation was not being sought for the same losses in other categories within the Commission. The relevant Claimants were requested to submit their responses by 30 September 1998.

7. On the basis of the responses received it was ascertained that eight individuals had filed category "C" claims for losses which had either been

incurred by their Government or in respect of which they had received compensation from their Government. Appropriate deductions were made from the relevant Government claims in this instalment to avoid multiple recovery.

8. The responses also enabled the secretariat to ascertain that no individual was seeking compensation in category "D" claims for losses in respect of which he or she had received compensation from his or her Government.

9. In addition to informing the Claimants that their Claims were under review and requesting the abovementioned identification information, the procedural orders of 24 July 1998 requested a number of Claimants to provide information and documents which the Panel considered necessary to properly quantify the losses in the Claims. The relevant Claimants were requested to submit their responses to these requests by 30 September 1998. Responses were received.

10. In reviewing the Claims, the Panel held regular meetings conducted in private at the Commission's headquarters in Geneva. Pursuant to article 34 of the Rules, the secretariat provided legal, administrative and technical support to the Panel. A consultant loss adjusting firm was retained to assist the Panel in the verification and valuation of the Claims.

II. THE CLAIMS

11. The standard claim form for category "F" claims contains the following twelve general loss types: contract; business transaction or course of dealing; real property; other tangible property; bank accounts and securities; income-producing property; payment or relief to others; evacuation costs; public service expenditures; environmental damage; depletion of natural resources; and other losses. The claims in the present instalment raise eight of these twelve loss types. The next section of this report describes the Claims by loss type.

12. On a number of occasions the Panel considered it more appropriate to review a particular loss under a different classification from that under which it had been entered by the Claimant in the claim form. These losses are discussed below as reclassified.

A. Contract

1. Australia

13. The claim submitted by Australia on behalf of the Australian Trade Commission seeks compensation for a total of 212,515 Australian dollars ("A$") for rent paid on the premises of the Trade Commission in Iraq for the period 30 September 1990 to 31 March 1992, and rent paid in advance on the residence of the Australian Trade Commissioner in Iraq in respect of the period of the occupation of Kuwait. The Claimant seeks compensation

because, following the evacuation of the members of the Trade Commission in August 1990, it was unable to use the premises.

14. The claim submitted by Australia on behalf of the Overseas Property Group seeks A$131,302 in respect of rent paid in advance on office and residential properties in Kuwait, which the Claimant was unable to use following the invasion and occupation of Kuwait.

2. Finland

15. Finland claims 379,101 Finnish markkaa ("Fmk") as compensation for rent paid in advance on the premises of its Embassy in Kuwait, and on the residences of five members of its diplomatic mission in Kuwait, which it was unable to use after the mission was closed.

16. Finland also seeks compensation for termination payments made to six members of ancillary staff employed by its diplomatic mission in Kuwait. The Claimant asserts that, as a result of the invasion and occupation of Kuwait, the contracts of locally employed staff of its Embassy in Kuwait had to be terminated and the Claimant had to make redundancy payments, payments in lieu of notice and pay holiday remuneration in accordance with the contracts of employment and the relevant Kuwaiti laws. The Claimant seeks Fmk 155,026 in respect of termination payments and accrued dues.

3. The Russian Federation

17. The Russian Federation seeks compensation in the amount of US$2,030,700 for the cost of leasing temporary premises for its Embassy in Kuwait and staff residences for the members of the mission following the liberation of Kuwait. The Claimant asserts that a new Embassy complex comprising Embassy offices and staff residences was under construction and was due to be completed in September 1990. Following Iraq's invasion of Kuwait, construction work was interrupted and the complex was damaged during the period of the occupation. According to the Claimant, because of "disorganisation of economic life in Kuwait after the occupation and hostilities, in particular, the lack of necessary construct materials, the shortage of construction subcontractors, their lack of required revolving funds due to problems of restoration of the Kuwaiti bank system and other similar reasons", repair and completion work could not commence until August 1992. The residential section of the complex was commissioned in September 1993 and the administrative section in April 1994. Consequently, in order to house the staff and allow the Embassy to operate, offices and residences had to be rented from the date of the return of the members of the mission until the completion of the work on the relevant sections of the complex. The Claimant seeks compensation for the rent paid on 24 apartments from September 1990 to August 1993 and on three office buildings from September 1990 to March 1994.

4. The United Kingdom

18. In the claim filed on behalf of the Commonwealth War Graves Commission, the United Kingdom claims compensation in respect of rent paid in advance on the residence of the Commission's supervisor in Iraq. The Claimant asserts that, in accordance with the lease, two years' rent had been paid in advance in January 1990. As the supervisor was unable to return to Iraq following the invasion of Kuwait, the Claimant is seeking compensation for the payments made in respect of a period of fifteen months, for a total of 32,553 pound sterling ("UK£").

5. The United States

19. In the claim filed on behalf of the United States Information Agency ("USIA"), the United States seeks compensation for rent paid in advance on the USIA office and Cultural Centre in Baghdad and on USIA staff residences in Kuwait and Iraq in respect of the seven months of the occupation of Kuwait, during which period it could not benefit from the use of the properties. The total amount claimed in respect of prepaid rent is US$110,531.

20. In the same claim, the United States also seeks US$97,265 as compensation for salaries paid to four employees in Kuwait during the period of the occupation of Kuwait. The Claimant asserts that the employees were hired on a contract basis, the terms of which obliged the Claimant to pay the employees until the end of their contracts even though it did not benefit from their services during the period of the occupation.

B. Real property

1. Finland

21. After the liberation of Kuwait, Finland flew a carpenter to Kuwait to repair the damage to the Embassy premises and staff residences. The Claimant seeks compensation for the wages paid to the carpenter and for the materials he used in carrying out the repairs. The total amount claimed for damage to real property is Fmk 16,223.

2. Lebanon

22. Lebanon asserts that, upon the return of its diplomats to Kuwait in the spring of 1991, it discovered that its Embassy premises had suffered damage and had been looted. The Claimant seeks 10,000 Kuwaiti dinar ("KD") for the cost of repairing the Embassy and installing alarm and air-conditioning systems.

3. The Russian Federation

23. The Russian Federation seeks KD 1,056,052 as compensation for the cost of repairing damage to its Embassy complex in Kuwait and for increases

in the cost of the contract for completing the Embassy complex. According to the Claimant a new Embassy complex, consisting of offices and staff residences, was being built in Kuwait at the time of the invasion. The complex was due to be finished in September 1990, but, because of the invasion and occupation of Kuwait, construction work was interrupted prior to completion. The Claimant asserts that, in the course of an inspection of the Embassy complex in September 1991, a team of specialists from the Ministries of Foreign Affairs and Finance discovered that the compound had suffered damage. It adds that "the front doors of the building were ripped off, the back doors were broken open; equipment, electrical wiring, water supply system, elevator facilities of the Embassy were severely damaged. ... The main building structures were not damaged seriously but the inner premises needed substantial repair". Completion and repair works began in August 1992 and were terminated in September 1994. The Russian Federation seeks compensation for "the work done to eliminate the damage caused to the buildings and for the increased cost of their finishing".

C. Other tangible property

1. Austria

24. The claim submitted by Austria on behalf of its Federal Ministry of Foreign Affairs seeks compensation for a total of KD 870 in respect of tangible property belonging to the Austrian Embassy in Kuwait that the Claimant asserts was stolen or damaged during the invasion and occupation of Kuwait.

2. Lebanon

25. Lebanon asserts that, upon return to Kuwait after the liberation, the Lebanese Ambassador to Kuwait discovered that a number of items of tangible property had been stolen from the Embassy or had been damaged. The Embassy safe had also been broken into and KD 1,946 had been stolen. The Claimant seeks KD 7,327 as compensation for the stolen money and for the cost of replacing the stolen and/or damaged items.

3. The Russian Federation

26. The Russian Federation claims 45,196 Iraqi dinars ("ID"), 77,189 roubles ("R"), KD 116,672 and US$207,400 as compensation for tangible property losses suffered by its Embassies in Iraq and Kuwait, its Consulate General in Basra, and by the representations of Sovfrakht, a subsidiary of the Ministry of Marine Shipping involved in freight operations, and the Press Agency Novosti in Kuwait. According to the Claimant, the property of the Embassy in Kuwait and of all governmental agencies was stored in the basement of the new Embassy compound, the doors of which were welded shut. Upon the liberation of Kuwait, a vanguard team was sent to Kuwait to reopen the Embassy and the agencies. According to the Claimant, the team found that the Embassy and the premises of the agencies had been plundered. It adds that "the most expensive state property ... modern technical equipment

stored in the basement of the new embassy [had been] stolen". Other property left in the premises of the agencies had also been looted or damaged. The property in question was office and household equipment, the diesel electric generator of the Embassy in Iraq, vehicles and spare parts, food, medical supplies, books and educational materials.

27. The Russian Federation also seeks R 58,116 as compensation for items that had been shipped from the Russian Federation to Kuwait but which had not yet been collected from the cargo storage building at the Kuwait City airport at the date of the invasion. The Claimant explains that, following the invasion, because of the blockade of the airport, it was impossible to recover the property. It adds that the cargo storage building was severely damaged in the course of military operations. Accordingly, the Claimant considered that its property had been destroyed and wrote it off from its property inventory.

4. The United Kingdom

28. In the claim submitted on behalf of the Commonwealth War Graves Commission, the United Kingdom seeks 424 Jordanian dinar ("JD") as compensation for the cost of replacing the wheels on the Commission vehicle which the Claimant asserts were stolen during the occupation of Kuwait.

5. The United States

29. In the claim filed on behalf of the Department of Defense, the United States seeks compensation for Government owned property "which Iraq forcibly caused the Marine Corps to abandon in the U.S. Embassy in Kuwait". The property in question included helmets, holsters, vests and flak jackets. The Claimant asserts that, upon their return to the United States Embassy in Kuwait in 1991, military personnel determined that the property had been damaged, destroyed or looted. A total of US$1,711 is sought as compensation for tangible property losses.

30. In the claim filed on behalf of the United States Information Agency, the United States seeks compensation for office and household equipment located on the premises of the USIA office and the staff residences in Kuwait, which was found to be either damaged or missing following the liberation of Kuwait. The property includes office equipment, a telecommunications disc, educational materials and equipment and four motor vehicles. The total claim for the cost of replacing the lost and/or damaged tangible property is US$316,586.

D. Bank accounts and securities

31. The Russian Federation seeks US$181,200 as compensation for interest which it asserts was not paid on the funds in the bank account of its Embassy in Kuwait. The Claimant explains that, following the invasion of Kuwait, all bank accounts at the National Bank of Kuwait were frozen and no interest was paid in respect of the period of the occupation. The Claim is

for interest that would have accrued on the Embassy's account during the seven months of the occupation.

E. Payment or relief to others

1. Bangladesh

32. Bangladesh asserts that several thousand Bangladeshi nationals were evacuated from Iraq and Kuwait following the invasion and occupation of Kuwait. Upon their arrival in Bangladesh, the evacuees received cash advances from the Government to cover the cost of internal transport to their homes. The Claimant is seeking compensation for cash advances made to evacuees for a total of 58,350 Bangladeshi taka ("tk").

2. Finland

33. Finland claims that it reimbursed five diplomats whose personal property was lost and/or damaged in Iraq and Kuwait during the occupation of Kuwait. The payments were made pursuant to a special decree applicable to members of the Finnish diplomatic service. The Claimant seeks compensation for the reimbursements for a total of Fmk 1,112,524.

3. Germany

34. The claim Germany submitted on behalf of the Hessian Ministry for Women, Labour and Social Affairs seeks compensation for social security payments made from January to September 1991 and from May to September 1991 respectively to two Kuwaiti brothers studying in Germany whose means of support had been cut off following Iraq's invasion of Kuwait. The total amount claimed in respect of the payments is 12,436 deutsche mark ("DM").

35. In the claim submitted on behalf of the Government of Bavaria, Germany seeks compensation for welfare payments made to two German nationals evacuated from Kuwait, and for support payments made for the period from August 1990 to March 1991 to a Kuwaiti family which had fled to Germany following Iraq's invasion of Kuwait. The Claimant seeks compensation for a total of DM 24,268 for the support payments.

4. Italy

36. Pursuant to a special decree, the Italian Institute for Foreign Trade reimbursed one of its officials who had been posted in Kuwait at the time of the invasion for the loss and/or damage to his personal property. The Claimant seeks 40,000,000 Italian lire as compensation for this reimbursement.

5. Thailand

37. In the months immediately following the invasion and occupation of Kuwait some 7,800 Thai workers were evacuated from Iraq and Kuwait.

Thailand asserts that, upon their arrival in Thailand, the evacuees received a cash advance of approximately 250 Thai baht ("B") each to assist with the cost of onward internal travel to their final destination. The Claimant seeks a total of B 1,889,900 in respect of the cash advances.

6. The United Kingdom

38. In the claim submitted on behalf of the Commonwealth War Graves Commission, the United Kingdom seeks UK£3,022 as compensation for the reimbursement made by the Commission to its local supervisor in Iraq for lost and or damaged personal property.

39. In the claim submitted on behalf of the Department of Social Security, the United Kingdom seeks compensation for 228 travel grants paid to individuals returning to the United Kingdom as a result of Iraq's invasion of Kuwait and war and hostilities in other areas. The purpose of the grants was to provide "help with reasonable travel, accommodation or subsistence expenses" to returnees from their port of entry to their likely final place of stay in the United Kingdom. The Claimant also seeks compensation for the costs of administering the grant scheme. The total amount claimed for the grants and administration costs is UK£56,538.

40. The third claim submitted by the United Kingdom also relates to payment or relief to others. In the claim of the Ministry of Defence, the United Kingdom seeks compensation for reimbursements for loss of personal property made by the Ministry to 79 servicemen who had been on secondment to the Government of Kuwait at the time of Iraq's invasion and occupation of Kuwait. The Claimant also seeks compensation for the fees charged by loss adjusters retained by the Ministry of Defence to review the requests for indemnification. The total of the Ministry of Defence claim is UK£2,253,816.

7. The United States

41. In the claim filed on behalf of the Ministry of Defense, the United States seeks US$404,913 as compensation for payments made to 26 United States servicemen who had been posted in Iraq and Kuwait at the time of the invasion and who lost items of personal property. The payments were made pursuant to special United States regulations.

42. In the claim filed on behalf of the Department of Health and Human Services, the United States seeks compensation for repatriation grants made to evacuees from Iraq and Kuwait to assist with onward travel in the United States and with settling-in expenses. The Claimant explains that payments were made to 90 per cent of the 2,260 evacuees who arrived from Iraq and Kuwait in the months following Iraq's invasion of Kuwait. It adds that, although the payments were intended to be limited to a one off lump sum payment of US$560 per person, on some occasions evacuees received more than one payment. According to the Claimant, fewer than five per cent of the repatriates received assistance after their first 90 days in the United

States, even though a small number continued to receive payments for up to one year. The Claimant seeks compensation for a total of US$1,249,147 in respect of the financial assistance provided.

F. Evacuation costs

1. Australia

43. The claim submitted by Australia on behalf of the Overseas Property Group seeks A$2,047 for travel allowances and incidental travel costs paid to an officer of the Property Group who had been on mission in Baghdad at the time of Iraq's invasion and occupation of Kuwait and who had been forced to stay in Iraq for an additional 11 days.

2. Austria

44. Following the invasion and occupation of Kuwait, a number of Austrian nationals were held hostage in Iraq. The former president of Austria travelled to Iraq and successfully negotiated their release. In the claim filed on behalf of the Office of the Federal President, Austria seeks 1,535,520 Austrian schilling as compensation for the costs incurred in chartering the aircraft which took the former president to Iraq and transported some one hundred hostages back to Austria after their release, and in renting lounges at the airport in Vienna.

3. Bangladesh

45. Bangladesh seeks a total of tk 45,232,439 in respect of evacuation costs.

46. The Claimant asserts that, in the period immediately after the invasion and occupation of Kuwait, thousands of Bangladeshi workers who had been resident in Iraq and Kuwait were repatriated. Although international organizations such as the International Organisation for Migration operated special flights free of charge to evacuate the workers, the Claimant had to bear the cost of the handling fees for the flights. The Government of Bangladesh paid the handling fees on 56 evacuation flights in the months immediately following Iraq's invasion of Kuwait. The Claimant also asserts that it paid for the charter of one special flight to evacuate 177 additional evacuees. Compensation is claimed for the handling fees and the special flight. In addition to the costs incurred in setting up the air bridge, the Claimant also seeks compensation for the cost of freighting food and other relief materials by air from Bangladesh to camps in the Middle East where the evacuees were stationed before being repatriated.

47. The Claimant also explains that, upon their arrival in Bangladesh, evacuees were transported by bus from the airport to bus and train stations, from where they travelled to their final destination. In respect of this final portion of the evacuation journey, the Claimant seeks compensation for the cost of renting buses to transport the evacuees from the airport to the stations, and for the cost of petrol and motor oil for

the vehicles of the Ministry of Manpower and Labour officials who were meeting the evacuees.

4. Finland

48. Finland seeks Fmk 174,078 as compensation for evacuation costs. The Claim includes the airfares for individuals and diplomats evacuated from Kuwait and Iraq, stopover accommodation and food costs for evacuees on their way back to Finland, return airfares for the dependants of diplomatic staff in Israel from Tel Aviv to their homes in Finland and living expenses in Finland during the period they were evacuated, and the cost of hotel accommodation in Jerusalem and Herzilia for the staff of the diplomatic mission in Israel. The Claimant also seeks compensation for airfares for diplomatic staff evacuated from Iran, and for the cost of food provided to security staff at the Finnish Embassy in Damascus. The Claim also includes the travel allowances, and travel and accommodation costs of Foreign Ministry officials involved in the coordination of the evacuation.

5. Ireland

49. Ireland asserts that, in January 1991, the dependants of seven Irish military officers serving with the United Nations Truce Supervision Organisation in Israel were evacuated. The Claimant seeks compensation for the cost of return airfares from Israel to Ireland, accommodation during the evacuation journey and the dependants' extraordinary living expenses in Ireland for a total of 16,847 Irish pounds ("IR£").

6. Lebanon

50. Lebanon seeks compensation for a total of KD 2,500 for the cost of evacuating the members of its diplomatic mission in Kuwait.

7. The Russian Federation

51. The Russian Federation claims compensation for the cost of evacuating staff and their dependants from its diplomatic missions in Iraq and Kuwait. According to the Claimant, some 890 Russian nationals were evacuated from Kuwait. The majority of the evacuees travelled from Kuwait to Baghdad and from there to Amman by road on Embassy vehicles. They were then flown to Moscow on special Aeroflot flights. The remainder of the evacuees from Kuwait travelled by road to Baghdad and were then flown to Moscow on special Aeroflot flights. A smaller number of Russian nationals were evacuated from Iraq. Of the 128 evacuees, eight drove to Moscow, 80 flew on Aeroflot flights from Baghdad until the closure of that airport and the last group to leave, in January 1991, travelled from Baghdad to Tehran by road and then flew to Moscow on scheduled Aeroflot flights. The Claimant seeks compensation for the cost of the airfares, petrol for the road portion of the evacuation journey, food, accommodation and domestic transport.

52. The Claimant also seeks compensation for the cost of bringing the evacuees back to Iraq and Kuwait following the liberation of Kuwait.

53. The total claim for the evacuation and return of Russian nationals from and to Iraq and Kuwait is US$283,100.

8. Spain

54. Spain seeks compensation for a total of 68,634,852 Spanish pesetas ("Ptas") in respect of evacuation costs. The Claim is for the expenses incurred by the Spanish Embassies in Amman, Baghdad, Damascus, Jerusalem, Istanbul, Nouakchott, Paris, Rome, London and Stockholm in evacuating some four hundred people from various locations in the Middle East and Mauritania. The costs relate to airfares, accommodation and miscellaneous costs while in transit, and internal flights in Spain to take the evacuees to their final destination. The Claimant also seeks compensation for an airlift operated by the Spanish Ministry of Defence. The Spanish air force evacuated individuals from Saudi Arabia, Israel, Jordan, Syria and Turkey.

55. The Claim also seeks compensation for the cost of telephone calls made in Spain by the families of the evacuees and for meal allowances paid to civil servants who were coordinating the evacuation operations from Madrid.

9. Thailand

56. Thailand asserts that, in the months immediately following the invasion and occupation of Kuwait, it evacuated some 7,800 Thai workers from Kuwait and Iraq. According to the Claimant, the evacuees were taken by road from Kuwait and Iraq to Jordan, where they stayed in camps run by the United Nations High Commission for Refugees, before being flown out to Thailand. The Claimant seeks compensation for the cost of chartering 31 special flights from Amman and Dhaka to Bangkok and for the cost of airfares on scheduled flights from various locations in the Middle East to Thailand to evacuate 7,799 nationals. The Claimant also seeks compensation for the cost of petrol and related expenses for the overland portion of the journey and for the operational costs (food, medicines and other relief materials) incurred by the collection camps it operated in Iraq. According to the Claimant, upon their arrival at Bangkok airport, the evacuees were transported by bus to the bus station from where they travelled to their final destination in Thailand. In respect of this portion of the evacuation journey, the Claimant seeks compensation for the cost of renting buses to transport the evacuees from the airport to the bus station.

57. The Claimant explains that the bulk of Thai workers in Kuwait and Iraq were evacuated in the period from 2 August 1990 to 11 October 1991. In the period from January 1991 to end of March 1991, the Claimant set up a number of camps in Jordan, Saudi Arabia and Israel to shelter any remaining Thai nationals in the area, and as a precautionary measure in case of armed attack on Israel or the neighbouring States. The Claimant seeks

compensation for the costs of setting up and operating the camps. Furthermore, according to the Claimant, a team of 44 officials from the Ministry of Public Health and the Ministry of Foreign Affairs and Department of Labour were sent to the Middle East during the period of Iraq's occupation of Kuwait to assist in the coordination of the evacuation operations and to provide medical assistance. The Claimant seeks compensation for the officers' travel and accommodation costs.

58. Thailand seeks a total of B 155,457,625 for evacuation costs.

10. The United States

59. In the claim filed on behalf of the Department of Health and Social Services, the United States seeks US$410,937 in respect of costs incurred by five states and the Salvation Army in setting up and operating reception centres and providing evacuees with immediate assistance.

60. In the United States Information Agency claim, the United States seeks US$62,693 as compensation for subsistence expense allowances paid to the dependants of USIA employees evacuated from Israel and Saudi Arabia. The payments were intended to cover extraordinary costs associated with their abrupt departure. All the payments were made to cover expenses incurred in the United States after the evacuees' arrival.

G. Public service expenditure

1. Bangladesh

61. Bangladesh seeks compensation for the cost of printing and photocopying claim forms for submission of individual claims to the Commission, for the cost of computerizing documents, for miscellaneous stationery costs, for overtime and food allowances paid to officials of the Ministry of Manpower and Employment and Training involved in the processing of claims and for the cost of transporting claim forms to Geneva. The Claimant seeks compensation for a total of tk 1,344,323 in respect of claim processing costs.

62. Bangladesh also asserts that for humanitarian reasons it does not intend to levy the 1.5 per cent charge from the claims of individuals and corporations which Governing Council decision 18 empowers it to charge.4/ Instead, the Claimant seeks reimbursement of the fee it did not levy on the awards it expects the Commission to make to individuals and corporate claimants. Bangladesh seeks compensation for a total of US$10,710,000 in respect of the charge it did not levy.

2. Finland

63. Finland seeks compensation for the cost of purchasing medicines, protective equipment and miscellaneous "emergency equipment", such as blankets, mattress and a gas cooker for its Embassies in the United Arab

Emirates, Iraq, Kuwait, Syria, Iran, Saudi Arabia and Israel. It also seeks compensation for the cost of transporting and installing a short wave radio and solar panel to its mission in the United Arab Emirates and the travel costs of an official from the Embassy in the United Arab Emirates who delivered protective equipment to Finnish nationals in Bahrain and Qatar. The Claimant also seeks compensation for the cost of hiring two buses for one month in Israel so that they could be on standby should it be necessary to effect an emergency evacuation of the Embassy staff in Tel Aviv. Finland's claim for protective measures is of Fmk 351,671 plus US$1,400.

64. The Claimant also seeks compensation in the amount of Fmk 241,037 for general public service expenditures. This amount includes the cost of a number of official trips concerning the evacuation operations and the reopening of the Finnish Embassy in Kuwait in the summer of 1991, the cost of bi-weekly and daily telephone calls to Finland by members of the Finnish diplomatic missions in Syria and Israel respectively, the cost of registering the vehicle of the Embassy in Kuwait in Turkey, and the cost of insurance and road permits in Amman for the vehicle of the mission in Baghdad.

3. Germany

65. In the claim filed on behalf of the Federal Ministry for Research and Technology, Germany seeks compensation for a total of DM 3,012,958 in respect, first, of funds provided by the Ministry to the University of Hohenheim for a joint research project with the Kuwait Institute for Research and Technology and, secondly, for the cost of scientific equipment which the university had loaned to the project's experimental station in Kuwait. The Claimant asserts that, immediately after Iraq's invasion of Kuwait, the town where the project was located was occupied by Iraqi forces. The project personnel fled and the research work was stopped. During Iraq's occupation of Kuwait, the experimental station was looted and the damage to the facility was so extensive that, following the liberation, it had to be written off as a total loss. In addition, the building of the Kuwait Institute of Scientific Research was looted and the storage media containing the experimental data gathered at the facility was destroyed.

66. In the claim submitted on behalf of the Federal Office of Administration, Germany seeks a total of DM 28,758 in respect of costs incurred in processing individual claims and sending them to the Commission in Geneva.

4. Ireland

67. In the period following Iraq's invasion and occupation of Kuwait, the Irish Ministry of Defence supplied respirators and other protective equipment to the Ministry of Foreign Affairs for distribution to Irish nationals in Jordan, Bahrain, Saudi Arabia and Iraq. The Ministry of Defence itself supplied protective equipment to Irish personnel stationed

in Lebanon, Israel and Iran. The Claimant seeks compensation for the cost of the protective equipment and for the reimbursement it made to the British Foreign and Commonwealth Office for respirators the latter had supplied to Irish citizens in Bahrain and Qatar. The total amount claimed in respect of protective equipment is IR£254,570.

5. The Russian Federation

68. The Russian Federation asserts that, following Iraq's invasion and occupation of Kuwait, a bombshelter was built in its Embassy in Iraq to protect embassy staff and their dependants. According to the Claimant, the Embassy and Commercial Mission in Iraq and a number of specialized agencies made available the equipment for constructing the shelter free of charge. The Claimant adds that the shelter was built entirely by the employees of the Embassy and agencies and specialists on mission in Iraq at the time. The Claimant seeks compensation for a total of US$148,500 in respect of the labour costs incurred in constructing the shelter.

69. The Russian Federation also claims US$26,627 as compensation for expenses incurred from 1991 to 1993 by members of its diplomatic mission in Kuwait in travelling to Abu Dhabi and Cairo to receive and send diplomatic correspondence because of the destruction of the special communications centre of the Embassy in Kuwait during Iraq's occupation of Kuwait.

6. Syria

70. In the claim filed on behalf of the Central Bureau of Statistics, Syria seeks compensation for the costs of establishing and operating a special compensation committee within the Ministry of State for Foreign Affairs entrusted with processing the claims of individuals and corporations for submission to the Commission. The total amount claimed for claim processing costs is US$2,143,997.

7. The United States

71. In the claim filed on behalf of the Department of Health and Human Services, the United States seeks compensation for the costs incurred by that department in administering the repatriation assistance scheme. The costs relate to the travel costs of Department officers, office supplies, photocopying, faxing and related office expenses, the salary of an additional employee hired to assist with the scheme, and the travel expenses and overtime allowances paid to officers from the Centre for Disease Control who were dispatched to the airports where the evacuees were arriving to ascertain whether any of the evacuees were suffering from communicable diseases. The total claim in respect of public service expenditure is US$46,371.

H. Other claims

1. Lebanon

72. Lebanon seeks compensation in the amount of KD 40,139 for loss of expected earnings. The Claimant asserts that, following Iraq's invasion and occupation of Kuwait, its Embassy and, consequently, the consular section in Kuwait were closed. The consular section was thus unable to provide the services for which it charged consular fees. Accordingly, the Claimant seeks compensation for the earnings it expected to make from consular fees during the seven months of the occupation of Kuwait.

2. Syria

73. In the claim filed on behalf of its Foreign Ministry, Syria seeks US$345,207 as compensation for loss of expected earnings in the form of consular fees. Following Iraq's invasion and occupation of Kuwait, the Syrian Embassy in Kuwait closed. Therefore, no consular services were rendered or consular charges levied. The Claimant seeks compensation for the earnings it expected to make from consular fees during the seven months of the occupation of Kuwait.

3. United States

74. The United States seeks US$70,682.90 as compensation for the costs of preparing the claims of the Department of Defense, the Department of Health and Human Services and the United States Information Agency.

III. LEGAL FRAMEWORK

75. In its report on part one of the first instalment of "F1" claims, the Panel discussed the legal framework within which the claims of Governments and international organizations would be decided by the Commission.5/ The discussion covered the law applicable to the category "F" claims, the procedural and evidentiary requirements imposed on the Claimants and the Panel's role in the proceedings. The Panel's findings concerning the applicable law, procedural rules and evidentiary requirements set out therein are also applicable to the claims in the present instalment.

76. In applying the aforementioned procedural and evidentiary requirements, the Panel found that within certain claims individual loss elements or portions thereof were not supported by particularized statements of claim or documentary or other appropriate evidence sufficient to demonstrate the circumstances or amount of the claimed losses in accordance with the Rules. In such cases, the Panel found that compensation should not be awarded for the portions of the Claims in question.

IV. COMPENSABILITY OF THE CLAIMS

A. Contract

1. Prepaid rent on Embassy premises, premises of governmental agencies and staff residences

77. Finland claims compensation for rent paid in advance on the premises of its Embassy in Kuwait and on the residences of five members of its Embassy staff. Australia, the United Kingdom and the United States claim compensation for rent paid in advance on the premises of Governmental agencies in Kuwait and Iraq and on the residences of their staff.

78. In the First Report, the Panel found that "the mere permanent or temporary closure of a diplomatic mission, even in time of armed conflict, does not give rise to a claim for compensation" and that "[i]n any event ... the Claimant would have incurred the rental expenses regardless of whether Iraq invaded and occupied Kuwait".6/

79. In the Third Report, the Panel considered the compensability of rent paid in advance on staff residences and found that, "rent paid in advance by Governments for staff residences should be considered in the same way as prepaid rent on Embassy buildings."7/ For the same reasons that the Panel found that the economic value of the loss of use of the Embassy premises was not quantifiable, because of the nature of the activities carried out by diplomatic missions, this type of loss was also not amenable to monetary evaluation.8/

80. In accordance with these findings, the Panel determines that the claims for prepaid rent on the premises of Embassies and Governmental agencies and on staff residences are not compensable. Accordingly, the Panel finds that the Australian, British and United States claims for rent paid in advance on office premises and staff residences in Kuwait and Iraq are not compensable.

2. Rental payments made after the liberation of Kuwait

81. The claim of the Australian Trade Commission for rent paid on the Commission's offices in Baghdad relates not only to payments made in respect of the seven months of the occupation of Kuwait, but also for rent paid up to the expiry of the sublease in March 1992. Rent was paid on the premises even though the Trade Commission did not reopen after the liberation of Kuwait. In the Panel's view, the claim for rent paid from the date of the liberation of Kuwait to the expiry of the lease is also not compensable. The Claimant made an independent decision not to return to Iraq to reopen the Trade Commission. Accordingly, the Panel finds that the rent payments made in respect of the period from March 1991 to March 1992 cannot be considered a direct loss resulting from Iraq's invasion of Kuwait and, therefore, are not compensable.

82. The Russian Federation seeks compensation for the cost of leasing temporary offices for its Embassy in Kuwait and residences for the staff of its diplomatic mission. The Claimant explains that, because of delays in repairing and completing the Embassy complex following the liberation of Kuwait, temporary premises had to be leased until the residential section of the complex was completed in September 1993, and the office section in March 1994. The Claimant also indicates that, although nearly completed at the date of the invasion, the compound had to be repaired and fitted out following the liberation of Kuwait and, because of delays and shortages of materials in the Kuwaiti construction market in the period following the invasion, the repair work could not commence before August 1992, or be completed before the aforementioned dates.

83. In the Panel's view, the cost of renting temporary premises while the Embassy and residences were being repaired is, in principle, compensable. However, certain limitations must be applied. First, no compensation should be awarded for rent paid in respect of the seven months of the occupation of Kuwait. The Claimant has not indicated whether the rent for this period was paid in advance - in which case in accordance with the principles laid down in the First and Third Reports it would not be compensable9/ - or, whether it was paid during the period of the occupation, as the properties were being used, in which case the Claimant has suffered no loss. Secondly, the Panel considers that, in view of the apparently limited nature of the damage to the Embassy complex, it would be unreasonable to award rent for the entire period claimed. The Claimant makes a general assertion that repair work could not begin until August 1992 because of the shortage of material and constructors in Kuwait following liberation. From many claims for repair costs filed before the Commission, it is clear that reconstruction work in Kuwait generally commenced in the second half of 1991 or, at the latest, in the first quarter of 1992. The Claimant has not provided a specific explanation of why such a delay in the commencement of the repair work was a result of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel can only recommend compensation for rent paid on temporary residences and offices for one year, the shortest period for which a lease can be entered into, from the liberation of Kuwait, as this period can be considered to be a direct result of Iraq's invasion and occupation of Kuwait. The Russian Federation's need to rent premises for longer than one year must, in the Panel's view, be attributed to other external circumstances and, therefore, is not compensable.

3. Payments made pursuant to contracts of employment

84. When it closed its Embassy in Kuwait following the invasion, Finland terminated the contracts of six locally employed members of ancillary staff. Pursuant to the relevant Kuwaiti laws and the contracts of employment it had to make a number of termination payments to the employees. Compensation is sought for payments made to the employees in lieu of notice, for holiday pay and for redundancy payments.

85. In the First Report the Panel considered claims for termination payments made by two Governments to their local employees upon the closure of their Embassies in Iraq and Kuwait and determined that payments made pursuant to contractual obligations should be compensated to the extent that they are adequately supported by documentary or other appropriate evidence.10/

86. For the same reasons, the Panel finds that the Finnish claim for termination payments is, in principle, compensable. However, the Panel considers that only those payments which relate to the termination of the contracts in the exceptional circumstances of Iraq's invasion and occupation of Kuwait should be compensable. On the other hand, payments that would have had to have been made in any event, but which had not actually been paid out by the date of the invasion, should not be compensated as they cannot be considered to be a direct result of Iraq's invasion and occupation of Kuwait. Accordingly, the portion of the Finnish claim that relates to two employees' accrued holiday pay for 1989 and 1990 is not compensable as it was already due to the employees at the time of the invasion.

87. Finland, Italy and the United States, in the claim filed on behalf of the Department of Defense, assert that, pursuant to special national regulations, they reimbursed members of their diplomatic staff, government agency officials and military personnel for loss of personal property in Iraq and Kuwait during the period of Iraq's invasion and occupation of Kuwait.

88. In the First and Third Reports the Panel considered similar claims for indemnification made in respect of loss of personal property and found them to be compensable contractual losses "to the extent that the reimbursements ... were made pursuant to special decrees or laws and regulations governing the employment contracts of members of the diplomatic service" provided they were adequately supported by documentary and other appropriate evidence.11/ The Panel considers that the same approach should be adopted in respect of the claims in the present instalment.

89. In the claim filed on behalf of the United States Information Agency, the United States seeks compensation for the salaries paid to four employees who had been hired in Kuwait on a contract basis. The Panel notes that the Claimant has not filed any evidence in support of this portion of its claim. All that has been submitted is a note prepared for the purpose of proceedings before the Commission indicating the total amount paid to the employees. In the Third Report the Panel ruled that explanatory statements are insufficient in themselves to meet the evidentiary standards imposed on category "F" claimants by the Rules.12/ Accordingly, the Panel finds that compensation should not be awarded for this portion of the USIA claim.

B. Real property

90. Finland and Lebanon seek compensation for the cost of carrying out repairs to their Embassies in Kuwait, which were damaged during the period of the occupation.

91. In the First Report the Panel addressed the issue of the compensability of repairs to Embassy premises in Kuwait and Iraq and concluded that claims for repair costs could be considered as resulting directly from the invasion and occupation of Kuwait. Consequently, the Panel found such losses to be compensable.13/

92. In accordance with its findings in the two previous instalments, the Panel finds that the repair costs claimed by Finland and Lebanon are compensable to the extent to which they are reasonable and adequately supported by documentary or other appropriate evidence.

93. The Russian Federation seeks compensation for the cost of repairing damage to its Embassy complex in Kuwait, for the cost of completing the construction of the complex and for the cost of carrying out some additional work.

94. In the Panel's view, compensation can only be recommended for the cost of repairing damage suffered as a result of Iraq's invasion and occupation of Kuwait. No compensation should be awarded for that portion of the costs that relate to the completion of the original work or the performance of additional work. As the documents submitted do not indicate the split of the costs among the three elements, the cost of the repair work cannot be precisely determined. Instead, this figure has to be estimated.

95. The Panel notes that on the basis of the materials filed in support of this portion of the Claim, it is not possible to determine with certainty the apportionment of the total costs claimed between repair and completion costs. Thus, in response to the Panel's procedural order of 30 September 1998 the Claimant submitted, inter alia, an addendum, dated 1 August 1992, to the original contract for the construction of the complex of January 1988, which provides that the Claimant would pay the contractor KD 874,910 in respect of "the completion of the remaining works of the complex, the repair of damages and the implementation of works originally to be implemented by the Owner". Similarly, the Claimant entered into an agreement with another contractor in the summer of 1993 for KD 47,000 for the "rectification of damages", "all items to be completed" in Block B and the "supply and fixing of carpet rolls and carpet tiles".

96. The Claimant seeks KD 134,143 for the cost of carrying out some additional work. From the original contract it is clear that the Claimant originally intended to carry out these works itself. Following the liberation of Kuwait, the Claimant decided that the contractor would carry out the works that had originally been excluded from the contract.

97. Regardless of whether increases in the cost of construction contracts following the liberation of Kuwait are, in principle, compensable, the case at hand does not raise this issue. This is because the work in question was not included in the original contract of 1988 as it was going to be carried out by the Claimant. Therefore, the sums that the Claimant considers to be an increase in completion costs are actually the costs of an entirely new element in the construction contract and, as such are not compensable.

98. However, in the Panel's view, the claim for additional work does contain a compensable element. Under the contract of January 1988, the contractor agreed to supply the materials and equipment necessary for the Claimant to carry out the work in question. The material was supplied but was stolen during the occupation of Kuwait. Compensation should be recommended for such material. However, as the documents submitted do not break down the KD 134,143 into labour costs and materials, the Panel cannot determine with certainty what portion of this amount relates to the cost of replacing the stolen materials. The cost of the material must, therefore, be estimated.

C. Other tangible property

99. A number of Claimants seek compensation for loss or damage to tangible property belonging to diplomatic missions or other governmental agencies in Iraq and Kuwait damaged during the period of the occupation of Kuwait.

100. In the First Report the Panel considered that, for the reasons given in respect of claims for damage to real property, claims for loss or damage to other tangible property located in Iraq and Kuwait should also be compensable to the extent that the loss was adequately supported by documentary or other appropriate evidence.14/ The same reasoning applies to the Claims in the present instalment, including a claim for cash stolen from the safe of an Embassy in Kuwait.

101. Despite a specific request from the Panel to submit invoices or other primary documentation in support of their claims for loss and/or damage to tangible property, Austria and the United Kingdom have not filed any evidence. All that has been provided are lists of the lost items, prepared by the Claimants for the purpose of the proceedings before the Commission. As already determined by the Panel in the Third Report, an explanatory statement is insufficient of itself to meet the evidentiary requirements placed on claimants by the Rules.15/ Accordingly, in the absence of any other documents in support of these Claims, the Panel cannot recommend the award of any compensation in respect of the claim of the Austrian Federal Ministry of Foreign Affairs and the portion of the Commonwealth War Graves Commission claim relating to tangible property losses.

D. Bank accounts and securities

102. The Russian Federation seeks compensation for interest not paid on its Embassy's bank account at the National Bank of Kuwait in respect of the seven months of the occupation, when all bank accounts were frozen.

103. In response to a request for information issued by the Panel under article 36 of the Rules, the National Bank of Kuwait explained that, although all bank accounts were frozen for the period of the occupation of Kuwait, following the resumption of business on 22 March 1991, pursuant to an Amiri Decree, interest was paid to all depositors in respect of the entire period of the occupation "by credit to customers' accounts by back value adjustments on the dates when the interest payments would have become due." On the basis of this information, and since the Claimant failed to provide evidence that interest was not paid to it, the Panel is unable to recommend the award of compensation in respect of this portion of the Russian Federation's claim.

E. Payment or relief to others

1. Cash advances

104. Bangladesh and Thailand seek compensation for cash advances they made to evacuees to assist them with the cost of overland travel to their final destination in their home states.

105. In the First Report the Panel held that "payments by Governments for temporary and extraordinary living expenses that result from individuals' departure from Kuwait or Iraq" were compensable.16/ In the Third Report, the Panel reviewed a claim for cash advances made to assist evacuees with the costs of the final part of their homeward journey. The Panel determined that the cash advances were payments made by Governments for "temporary and extraordinary expenses" resulting from individuals' departure from Iraq and Kuwait and, as such, were compensable.17/

106. For the same reasons, the Panel finds that the claims for cash assistance in the present instalment are compensable.

2. Reimbursements for loss of personal property

107. In the claims filed on behalf of the Commonwealth War Graves Commission and the Ministry of Defense, the United Kingdom claims compensation for reimbursements for loss of personal property made to the War Graves Commission supervisor in Iraq and to 79 servicemen who had been on secondment to the Government of Kuwait at the time of the invasion. The Claimants were not under any contractual or other obligation to indemnify their employees, as was the case in the claims for reimbursements discussed at section IV.A.3 above.

108. Paragraph 36 of Governing Council decision 7 provides that compensation is available "to reimburse payments made or relief provided by Governments or international organizations to others ... for losses covered by any of the criteria adopted by the Council."18/

109. In the Panel's view, the effect of this provision is to make compensable claims for payments made by Governments in respect of losses for which the recipients would have been entitled to file individual claims before the Commission, to the extent the underlying individual losses are compensable in accordance with the criteria developed by the Commission for individual claims.19/

110. Applying these criteria to the present Claims, the Panel notes that the servicemen and the supervisor could have filed individual claims before the Commission under categories "C" and "D" for their losses of personal property. Accordingly, the Panel finds that the reimbursements are compensable to the extent that they are supported by documentary or other evidence.

111. The Panel notes, however, that despite an express request to submit invoices or other primary documents evidencing the underlying loss and/or damage to property, no documents have been adduced to evidence the reimbursement made to the supervisor or the underlying property losses. The Claimant has merely stated that it reimbursed the supervisor and has provided a list of the lost property, prepared for the proceedings before the Commission. In accordance with its determination in the Third Report that explanatory statements are not sufficient on their own to meet the evidentiary standard imposed on claimants by the Rules,20/ the Panel finds that the Commonwealth War Graves Commission claim fails to meet the evidentiary standard established by the Rules and therefore does not recommend the award of any compensation in respect of this portion of the Claim.

112. The Ministry of Defense also seeks compensation for the fees paid to the loss adjusters retained by the Ministry to adjust the requests for indemnification. In the Panel's view, this expense was an administrative cost incurred in valuing the underlying losses. As such, it cannot be considered to result directly from Iraq's invasion and occupation of Kuwait. Consequently, the Panel cannot recommend any compensation for this portion of the Ministry of Defense claim.

3. Support payments

113. The claims filed by Germany, on behalf of the Hessian Ministry for Women, Labour and Social Affairs and the Government of Bavaria, seek compensation for support payments made by the Claimants to a number of evacuees from Kuwait. In the claim filed on behalf of the Department of Social Security, the United Kingdom claims compensation for travel grants paid to individuals returning to the United Kingdom as a result of the invasion of Kuwait and hostilities in other areas. The grants were

intended to cover the evacuees' travel expenses within the United Kingdom. In the claim submitted on behalf of the Department of Health and Human Services, the United States seeks compensation for repatriation grants paid to evacuees from Iraq and Kuwait to assist them with onward travel in the United States and settling expenses.

114. In the First Report the Panel found that "payments by Governments for temporary and extraordinary living expenses that result from individuals' departure from Kuwait or Iraq or their inability to return to those countries during the period of 2 August 1990 to 2 March 1991 are directly related to Iraq's invasion and occupation of Kuwait."21/ The Panel also found that "the Commission cannot award more to Governments who provided relief to others than the recipients of the relief would have been entitled to had they filed an individual claim in category 'C'". For example, in the first "C" Report, income loss claims were limited to seven times a claimant's monthly salary.22/ For these reasons, the maximum period for which the Panel considered recommending compensation for temporary relief payments made by a Government to a person whose source of support in Kuwait or Iraq was cut off was seven months.23/

115. The Panel considers that the same approach should be adopted with regard to the claims in the present instalment. Accordingly, it will only recommend compensation for payments for "temporary and extraordinary" support for a maximum of seven months.

116. In the First Report the Panel also addressed the issue of the date when the relief payments were made. It found that in cases where compensation was sought for support payments made considerably after the liberation of Kuwait, Claimants had to provide an explanation of the special circumstances which, in it its view, rendered such payments a direct result of the invasion and occupation of Kuwait.24/

117. The Panel confirms the approach that it took in the First Report, and the Panel considers that, in the absence of an explanation of the special circumstances, payments will only be compensable if they relate to a reasonable period immediately after the liberation of Kuwait. In the circumstances of the claims before it, the Panel considers 1 May 1991 to be a reasonable cut-off date. Accordingly, any payments made in respect of a period after 1 May 1991 will not be compensated.

118. In the Panel's view, all of the aforementioned claims relate to payments of "temporary and extraordinary" living expenses and, as such, are compensable, provided they do not exceed a period of seven months or were not made in respect of a period after 1 May 1991.

119. The Panel notes that, despite being expressly requested in a procedural order to submit this information, the United Kingdom was unable to provide any indication of the identity of the recipients of the travel grants, their place of origin in the Middle East, the amount paid to each evacuee and in respect of what period, when the payment was made, or, how

many of the travel grants were paid to individuals fleeing from conflicts unrelated to Iraq's invasion of Kuwait. Although convinced that travel grants were paid, in the absence of such information the Panel is unable to properly value the Claim and, accordingly, can only recommend compensation for a reasonable proportion of the amount claimed.

120. The same Claimant also seeks compensation for costs incurred in administering the scheme, but has not filed any evidence in support of this claim. The Panel is thus unable to recommend any compensation in respect of this portion of the Claim.

121. In response to a procedural order requesting information on the identity of the recipients of the repatriation grants, how much each evacuee received and the period in respect of which the payments were made, the United States Department of Health and Human Services merely indicated that the payments were made to 90 per cent of the 2,260 evacuees from Iraq and Kuwait who arrived in the United States by December 1990 at the latest, that the basic payment was US$560 per person, and that fewer than five per cent of the repatriates received assistance after their first 90 days in the United States. In the absence of information on the precise amount paid to each evacuee, the Panel can only recommend compensation for a reasonable proportion of the amount claimed, assessed on the basis of the basic US$560 lump sum paid to 95 per cent of the abovementioned 90 per cent of evacuees who received repatriation grants.

F. Evacuation costs

122. A number of Claimants seek compensation for costs they incurred in evacuating individuals from a number of states in the Middle East and from neighbouring areas following Iraq's invasion of Kuwait.

123. In the First and Third Reports, the Panel laid down a number of principles governing the compensability of claims for evacuation costs.25/ The same principles are applicable to the claims in the present instalment. Accordingly, compensation will only be recommended for claims for costs incurred in evacuating individuals from Kuwait, Iraq, Israel and Saudi Arabia, and for expenses directly related to evacuation such as travel, accommodation, food, urgent medical treatment and the cost of establishing and operating transit camps.

124. The Russian Federation seeks compensation for costs incurred in evacuating individuals from Iraq and Kuwait. No evidence has been filed in support of this portion of the Claim. Accordingly, the Panel is unable to recommend the award of any compensation. The Panel notes, however, that some of the evacuation flights in respect of which compensation is sought in the Russian Federation's claim form the basis of a claim submitted in category "E" by Aeroflot.

125. A number of claimants seek compensation for accommodation, travel and miscellaneous costs incurred by Government officials involved in the

evacuation operations both in the Middle East and in the Claimant states. The United States Department of Health and Human Services also seeks compensation for reimbursements the department made to five states of the Union and to the Salvation Army for costs they incurred in receiving the evacuees. The Claimant asserts that the expenses relate to the rental of facilities to be used as reception centres, the cost of setting up telephone lines and the cost of telephone calls, the cost of emergency medical and psychological care for the evacuees, overtime salaries paid to state employees and some financial assistance payments made by the states to the repatriates.

126. In the Third Report the Panel reviewed claims for public service expenditure of a general nature, such as the costs of official missions and the costs of transfers of diplomats. It found that "these expenses were incurred by States in the exercise of protective functions in times of emergency. As these tasks are an integral part of the function of diplomatic missions, they cannot in the Panel's view be considered to be of the extraordinary nature that would warrant their compensability".26/

127. In the Panel's view, the same reasoning applies to expenses incurred by Government officials operating from their home state. Accordingly, such general expenses are not, in the Panel's view, compensable. An exception must be made, however, for costs directly related to compensable evacuation activities such as the provision of medical assistance. Therefore, the costs incurred by the Thai officials in the Middle East in providing medical assistance to evacuees should be compensated. The Panel was unable to recommend compensation in the United States' claim as it could not identify any specific costs relating to medical assistance provided.

128. The Panel considers that compensation should be recommended for financial assistance provided to evacuees by individual states of the Union and reimbursed by the Department of Health and Human Services to the extent that it could be identified as a specific reimbursement within the Claim. As the Claimant did not provide any information or documents concerning the underlying payments to the evacuees, the Panel only recommends compensation for a reasonable proportion of the amount claimed.

129. The United States, in the claim submitted on behalf of the United States Information Agency, and Ireland seek compensation for living allowances and expenses paid to the dependants of government officials who had been repatriated to cover expenses incurred in their home state.

130. In the Third Report the Panel considered a similar claim for allowances paid to Government officials and their dependants after their arrival in their home state. The Panel found that the payments were not compensable as they "were not intended to cover 'temporary and extraordinary living expenses that resulted from individuals' departure from Kuwait or Iraq during the period of 2 August 1990 to 2 March 1991'"27/ but, rather, were "discretionary payments for ongoing ordinary living

expenses that are incurred after a person has left the region"28/ and, as such, not compensable.29/

131. In the Panel's view, the same reasoning applies to the claims in the present instalment. Accordingly, no compensation is recommended in respect of the portion of the Irish claim for payments made in respect of living expenses in Ireland and the portion of the United States claim relating to subsistence allowance payments made to its officials.

132. The Panel notes that Australia, in the claim submitted on behalf of the Overseas Property Group, and Lebanon have not submitted any evidence in support of the evacuation costs portion of their claims. The Panel is thus unable to recommend that any compensation be awarded in respect thereof.

G. Public Service Expenditure

1. Claims processing costs

133. Bangladesh, Germany, in the claim submitted on behalf of the Federal Office of Administration, and Syria, in the claim submitted on behalf of the Central Bureau of Statistics, seek compensation for costs incurred in processing claims for individuals and corporations for submission to the Commission. Additionally, Bangladesh claims for compensation equivalent to the 1.5 per cent charge which, although authorized by Governing Council decision 18 to levy from the awards made by the Commission to individual and corporate claims, it chose not to deduct on humanitarian grounds.

134. The Panel considered claims for claim processing costs in the second instalment. There it referred to paragraph I.1 of Governing Council decision 18, which provided that

> "Governments may offset their costs of processing claims by deducting a small fee from payments made to claimants ... Such fees shall be commensurate with the actual expenditure of the Governments. In the case of awards payable to claimants in categories 'A', 'B' and 'C', the fees should not exceed 1.5 per cent, and for awards payable to claimants in categories 'D', 'E' and 'F', the fees should not exceed 3 per cent."

135. The Panel concluded that it was intended that this fee be the sole compensation to which Governments are entitled in respect of their claim processing expenditure and awarded no compensation to the claims for claim processing expenses. The same principles apply to the claims in the present instalment. Regardless of whether Governments have levied the fee from the awards of individuals and corporations, that is the sole source from which they can recover costs they have incurred in processing claims. Accordingly, the Panel finds that the three claims for claim processing costs in the present instalment, and Bangladesh's claim for the value of the charge it did not levy, are not compensable.

2. Costs of protective measures

136. Finland and Ireland seek compensation for costs incurred in supplying protective equipment, medicines and miscellaneous other equipment to their nationals in a number of states in the Middle East. The Russian Federation built a bombshelter in its Embassy in Iraq for the protection of the members of its mission and their dependants. The Claimant seeks compensation for the labour costs incurred in constructing the shelter.

137. In the Third Report the Panel considered the compensability of claims for costs incurred by Governments in purchasing safety equipment. The Panel held that "safety measures taken by Claimants for the protection of individuals and property are a compensable expense, provided they are reasonable in relation to the type of risk to which the individual and/or property is exposed."30/

138. The Panel considers that the same principles are applicable in respect of the claims in the present instalment. In the Panel's view, when considering claims for costs incurred in purchasing safety and emergency equipment, a distinction must be drawn between, on the one hand, between safety equipment and measures whose sole use is protective, such as the purchase of Nuclear-Chemical-Biological ("NBC") equipment and the construction of the bombshelter, and, on the other hand, costs incurred in purchasing material which can be put to ordinary use or used in an emergency, such as jerrycans, batteries, wires, torches and adhesive tape. With regard to the former, the Panel is of the view that, provided the measures are "reasonable in relation to the type of risk to which the individual and/or property is exposed", and they are taken in relation to the "relevant geographical area" (see para. 140, infra), the costs of the protective measures should be compensable. With regard to the claims in the present instalment, supplying individuals with NBC equipment, building a bombshelter and purchasing medicines, are reasonable measures taken for the protection of individuals in view of the specific threat to which they were subjected in the period of the occupation of Kuwait and, as it cannot be reasonably expected that Embassies in the Middle East would have such protective equipment, the cost incurred in purchasing them can be considered a direct result of the invasion and occupation of Kuwait.

139. In the Panel's view, the same cannot be said of costs incurred in purchasing miscellaneous equipment that can either be put to ordinary use or be used in an emergency. The purchase of such items is not sufficiently related to the risk to which the Embassies in the Middle East were exposed as a result of Iraq's invasion and occupation of Kuwait for the costs incurred to be compensable. Furthermore, such material does not provide protection against any one specific threat but can be used in circumstances other than a protective response to military threat. The general use of such equipment and the fact that much of the equipment is something Embassies can be expected to stock in any event supports the finding that it cannot be considered compensable.

140. The Panel considers that a geographic limitation is implied in the requirement that safety equipment is only compensable if it is reasonable in relation to the type of risk to which the individual and/or property is exposed, namely that only protective measures taken within a specific geographical area will be compensated. In the Panel's view, for example, the purchase of protective equipment for individuals in Qatar and Bahrain, two States which were not the subject of any specific threat of military action, cannot be considered reasonable. For the same reasons that the Panel limited the compensability of evacuation costs to those costs incurred in evacuating individuals from Iraq, Kuwait, Israel and Saudi Arabia only,31/ it also limits the compensability of costs incurred in taking protective measures to those taken in respect of individuals and property in the same four States.

141. Finland seeks compensation for the cost of renting two buses for a month to ensure they would be immediately available should it prove necessary to effect an emergency evacuation of the staff of its Embassy in Tel Aviv. Although this is not a typical protective measure, the Panel considers that, in the circumstances prevailing in Israel in the months following the invasion of Kuwait, ensuring the availability of emergency means of transport for embassy staff was a reasonable measure for the protection of individuals. Furthermore, keeping two buses on standby for a month was a relatively inexpensive manner of ensuring diplomatic staff could make a speedy departure in case of emergency. Accordingly, the Panel considers that the costs incurred in renting the buses are compensable.

3. Other expenditures

142. On closing its diplomatic missions in Kuwait and Iraq, Finland took the two Embassies' vehicles to other missions in the Middle East. In doing so, the Claimant had to re-register the vehicles and pay road tax. Compensation is sought for the costs incurred in these procedures.

143. The Panel considers that the costs incurred by Finland in re-registering embassy vehicles in Syria and Turkey cannot be considered an expense incurred for the purpose of entering those two States in the course of an on-going evacuation journey. Instead, they are costs incurred to ensure permanent and continued use of the vehicles. As such, they cannot be considered as costs arising as a direct result of Iraq's invasion and occupation of Kuwait.

144. Following the invasion and occupation of Kuwait, the Finnish Government agreed to pay the costs of bi-weekly and daily telephone calls to Finland by the members of its diplomatic missions in Israel and Syria respectively. The Claimant is seeking compensation for the costs of the telephone calls. Spain seeks compensation for the costs of the telephone calls made by relatives of evacuees from Spain.

145. In the Third Report the Panel found that the costs of telephone calls made by individuals held hostage in Kuwait were compensable as the

individuals were detained in Kuwait against their will in precarious conditions.32/ However, in the same report the Panel also determined that telephone costs incurred by individuals in the course of their evacuation journeys were not compensable.33/ The Panel notes that the telephone calls for which compensation is sought in the present instalment were not made by individuals detained against their will. Accordingly, the abovementioned Claims cannot be compared to those found compensable in the Third Report. Instead, they are comparable with the claims for telephone calls made by evacuees and, therefore, the Panel finds that no compensation should be awarded for the costs of the telephone calls.

146. A number of Claimants seek compensation for the cost of official trips by Government officials, for the cost of official travel to receive and send diplomatic correspondence, and for the costs incurred in administering the repatriation assistance schemes.

147. In the Third Report, the Panel considered similar claims for the costs of official missions, salaries paid to additional staff, and overtime payments and found that those expenses had been "incurred by States in the exercise of their protective functions in times of emergency".34/ It added that as the tasks in question were "an integral part of the functions of diplomatic missions"35/ they could not be considered to be of the extraordinary nature that would warrant their compensability.

148. In the Panel's view, although the Third Report only expressly refers to the functions of "diplomatic missions", the reasoning is equally applicable to the protective functions exercised by other Governmental agencies. Accordingly, the Panel determines that no compensation should be recommended for these portions of the Finnish, Russian and United States claims.

149. In the claim filed on behalf of the Federal Ministry for Research and Technology, Germany claims compensation for the investment it made in a joint research project with a Kuwaiti research institute pursuant to an inter-governmental agreement which, it claims, produced minimal results because of the damage suffered by the research facilities in Kuwait during the occupation. The Claimant also seeks compensation for the loss and/or damage of scientific apparatus loaned to the project in Kuwait by the University of Hohenheim, the German research institution involved in the project.

150. The Panel notes that the Claimant was not directly involved in the research project. Following the conclusion of the inter-governmental agreement with Kuwait, it had made a grant to the University of Hohenheim which had funded the German portion of the project. The terms of the grant did not envisage that the results of the joint project would be used for commercial or other purposes by the Claimant, nor that it would retain any interest, direct or indirect, in the funds paid to the University.

151. The Panel notes that the Claimant Ministry did not expect any material return from the grant made to the University for a research project of a purely scientific nature. Furthermore, in spite of Iraq's invasion of Kuwait, the final project report prepared in 1993 states that "the grant's intended purpose has been achieved". Accordingly, the Claimant cannot be considered to have suffered any loss.

152. In the Panel's view, the only loss which has arisen as a result of Iraq's invasion and occupation of Kuwait is that relating to the scientific equipment loaned to the project by the University of Hohenheim. This was paid for out of the University's general funds and not out of the research project funds. The Panel, therefore, recommends that compensation be awarded in respect of the loss of the University's equipment on the same basis as for other tangible property losses. The Panel emphasizes that the award of compensation is intended for the University and not the Claimant Ministry, as it was the former which suffered the loss.

H. Other costs

153. Lebanon and Syria in the claim filed on behalf of the Foreign Ministry, seek compensation for loss of expected earnings from consular fees which they were unable to charge during the seven months of the occupation of Kuwait, when their diplomatic missions in Kuwait were closed.

154. In decision 9, the Governing Council addressed the compensability of business losses.36/ Paragraph 1 of the decision provides that "[t]he propositions and conclusions contained in this Decision shall apply to compensation for the loss of earnings or profits and other business losses covered by Security Council resolution 687 (1991)." Paragraph 3 emphasises that the decision does not attempt to describe all of the conceivable factual and legal situations which may result in compensable business losses. Section I of the decision deals specifically with losses in connection with contracts or past business practice and Section II addresses losses relating to tangible assets.

155. Although the claims for loss of consular fees in the present instalment are neither "losses in connection with contracts or past business practice" nor "losses relating to tangible assets", the Panel considers that they are claims for "loss of earnings or profits" of the kind referred to in paragraph 1 of the decision. Accordingly, the principles of compensability and valuation enshrined in Governing Council decision 9 are applicable by analogy to the present claims.

156. The Panel notes that the provision of consular services in exchange for the payment of a fee is an activity carried out by Governments on a cost-covering basis which is not intended to be income producing. The Panel nevertheless accepts that in exceptional circumstances the provision of consular services could produce an income and that the inability to provide the services would, in those circumstances, lead to a "loss of earnings or profits" of the kind referred to in paragraph 1 of Governing

Council decision 9. In such cases, the value of the compensable loss would be reached by offsetting costs that would have been incurred in providing the consular services from the claim for loss of earnings. Though not excluding that the consular section of the Claimants' Embassies in Kuwait could have been income producing, the Panel notes that, despite specific requests in a procedural order to provide details of the savings made by the consular sections in the months when the consular section in Kuwait was not operative, the Claimants did not provide sufficient explanations, figures or supporting documents for such savings. In the absence of such information any value put by the Panel on the actual loss of earnings would be purely speculative. Accordingly, the Panel finds that no compensation can be recommended for the claims for loss of consular fees.

V. OTHER ISSUES

A. Currency exchange rates

157. As in the first two instalments, some of the Claimants in the present instalment have incurred losses or stated their claims in currencies other than United States dollars. As the Commission issues awards in United States dollars, the Panel is required to determine the appropriate rate of exchange. In the First and Second Reports the Panel determined that adopting the currency exchange rate as at the date of loss was the most appropriate method of calculating the applicable exchange rate. The losses had occurred fairly regularly throughout the period of Iraq's occupation of Kuwait, namely from 2 August 1990 to 2 March 1991. The Panel adopted 16 November 1990, the midpoint of the occupation period, as the date of loss.

158. The Panel also noted that special circumstances existed in relation to the exchange rate to be adopted for losses suffered in Kuwaiti dinars. As the invasion and occupation of Kuwait had caused a significant disturbance of the exchange rate for the Kuwaiti dinar during the period of the occupation, the Panel adopted the exchange rate for the Kuwaiti dinar that prevailed immediately prior to the invasion.37/

159. The Panel finds that the majority of losses for which compensation is sought in the present instalment also occurred fairly regularly throughout the period of the occupation of Kuwait but, in general, it was not possible to identify the precise date of their occurrence. Therefore, in this instance, the Panel also considers 16 November 1990, the midpoint of the occupation, to be the most appropriate date for determining the applicable exchange rate. For the reasons given above, 1 August 1990 is the date adopted for determining the exchange rate for Kuwaiti dinars.

160. The rates of exchange used as at 1 August 1990 for the Kuwaiti dinar and 16 November 1990 for other currencies are the average monthly rates as reported in the United Nations Monthly Bulletin of Statistics of April 1991.38/

B. Interest

161. In decision 16 the Governing Council stated that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." The decision added that "the methods of calculation and of payment of interest will be considered by the Governing Council at the appropriate time" and that "[i]nterest will be paid after the principal amount of awards".39/ Thus, at this stage, the Panel need only set the date from which interest will run. For the same reasons that it adopted 16 November 1990 as the date of loss for the purpose of determining exchange rates, the Panel considers that the same date should be used for calculating interest. Accordingly, the Panel determines that interest be awarded on the Claims as of 16 November 1990.

C. Claims preparation costs

162. In a letter dated 6 May 1998, the Panel was notified by the Executive Secretary of the Commission that the Governing Council intended to resolve the issue of claims preparation costs at a future date. Accordingly, the Panel takes no action with respect to claims for such costs at this stage.

VI. QUANTIFICATION OF THE CLAIMS

163. As discussed above, the Panel considers that certain loss elements within the Claims should not be compensated because they fail to meet either the Commission's procedural and evidentiary requirements or the directness requirements as formulated in Security Council resolution 687 (1991).

164. In many of the Claims, the documentary or other evidence submitted established that an alleged loss had, in fact, occurred. The evidence was insufficient, however, to demonstrate with a reasonable degree of certainty the amount of the loss. In such cases the Panel, in conformity with general principles of law, exercised its discretion in assessing the amount of compensation to be recommended. In exercising such discretion, the Panel took into account the level and type of evidence that should reasonably be required of a claimant given the circumstances prevailing at the time of the loss, particularly in Iraq and Kuwait.40/

165. With respect to the loss elements that the Panel considers to be compensable, the Panel verified that the losses had, in fact, occurred and then quantified such losses. The Panel was assisted in this task by expert loss adjusting consultants and the secretariat. Initially, the Panel undertook a careful examination of the statements of claim and evidence filed by the Claimants. As explained in paragraph 9 above, the Panel then required certain Claimants to answer questions and to submit additional documents that it deemed necessary to quantify the amount of the alleged losses. In addition to verifying that the claimed losses had, in fact, occurred, the Panel also considered the reasonableness of the Claimants'

conduct and of the amounts claimed. For example, in relation to claims for evacuation costs, the Panel only recommended compensation for one-way economy fares.

166. In quantifying the losses, the Panel weighed the amount and type of evidence submitted in support of the claimed losses and received advice from the loss adjusters on the nature and quantity of evidence that a claimant would normally be expected to submit in comparable emergency situations. In reaching the figures of the recommended awards, the Panel adopted general principles of loss adjustment such as reasonableness of costs incurred, depreciation and betterment. For example, in claims for lost or damaged property where the amount claimed was the replacement value, reductions were made to take into account the age of the property in question at the time the loss or damage occurred. In respect of claims for reimbursements for lost or damaged property, deductions were made if sufficient evidence supporting the underlying losses had not been provided or to reflect depreciation or part use of the property.

167. The Panel limited compensation for evacuation costs to evacuations from Iraq, Kuwait, Israel and Saudi Arabia. Similarly, costs incurred in respect of protective measures were also limited to those taken within these four States. On occasion Claimants sought compensation for evacuation costs or protective measures taken in a number of states in the Middle East without providing a State by State breakdown of the costs. In these cases the Panel only recommended compensation for that proportion of the claims which it considered related to the aforementioned four States.

168. As noted in paragraph 95 above, the documents filed in support of the Russian Federation's claim for damage to the Embassy complex in Kuwait did not provide a breakdown of what portion of the costs were incurred in repairing the complex and what portion related to the cost of completing the construction work. Moreover, the description of the damage indicated that it was rather limited in nature and that some of the damage must be deemed to have occurred as a result of the delay in the resumption of the construction work. Accordingly, the Panel only recommended compensation for a percentage of the amount claimed. Similarly, it was not possible for the Panel to determine with certainty what portion of the sums paid for carrying out the additional work related to building materials - the only element which the Panel considered compensable - and what portion related to labour or other costs. In light of this uncertainty, the Panel was only able to recommend compensation for a percentage of the claim for additional work.

169. The Russian Federation explained that its claim for the cost of building the bombshelter in Baghdad related exclusively to labour costs because the necessary building materials and equipment had been provided free of charge by Russian companies operating in Iraq. The Claimant submitted estimates of the cost of the jobs carried out, but did not provide any information or supporting documents indicating who actually carried out the work or at what cost. The absence of such information and

of plans of the bombshelter made it impossible for the Panel to precisely value the claim or to assess whether the labour costs claimed were reasonable. Indeed, it was not clear whether external workers were hired to construct the shelter or whether the work was carried out by workers already employed by the diplomatic mission or specialized governmental agencies. In light of such uncertainty, the Panel only recommended compensation for a reasonable portion of the labour costs claimed.

170. On the basis of its review and evaluation of the Claims, the Panel makes the following determinations concerning the quantification of the Claims, summarized by general loss type in the table below. The amounts are stated in United States dollars.

QUANTIFICATION BY LOSS ELEMENT									
Claimant	Contract	Real property	Tangible property	Bank accounts and securities	Payment or relief to others	Evacuation costs	Public service expenditures	Other	Total amount recommended
Australia: Australian Trade Commission	0								0
Australia: Australian Overseas Property Group	0					0			0
Austria: Federal Ministry of Foreign Affairs			0						0
Austria: Office of the Federal President						137,985			137,985
Bangladesh					1,630	1,230,953	0		1,232,583
Finland	36,806	4,500			196,478	10,433	49,340		297,557
Germany: Ministry for Research and Technology							2,699		2,699
Germany: Hessian Ministry for Women, Labour and Social Affairs					3,020				3,020
Germany: Government of Bavaria					14,409				14,409
Germany: Federal Office of Administration							0		0
Ireland						8,512	62,103		70,615
Italy	35,401								35,401
Lebanon		10,381	14,179			0		0	24,560
Russian Federation	585,010	820,391	376,742	0		0	74,250		1,856,393
Spain						416,402			416,402
Syria: Central Bureau of Statistics							0		0
Syria: Foreign Ministry								0	0

QUANTIFICATION BY LOSS ELEMENT									
Claimant	Contract	Real property	Tangible property	Bank accounts and securities	Payment or relief to others	Evacuation costs	Public service expenditures	Other	Total amount recommended
Thailand					75,055	6,173,853			6,248,908
United Kingdom: Commonwealth Graves Commission	0		0						0
United Kingdom: Department of Social Security					26,423		0		26,423
United Kingdom: Ministry of Defence					2,685,684		0		2,685,684
United States: Department of Defense	322,206		0						322,206
United States: Department of Health and Human Services					1,043,045		42,950		1,085,995
United States: Information Agency	0		192,926			0			192,926
Total									14,653,766

VII. RECOMMENDATIONS

171. On the basis of the foregoing, the Panel recommends that the following amounts be awarded as compensation for losses incurred by the Claimants as a direct result of Iraq's invasion and occupation of Kuwait:

(a) Australia: Trade Commission nil and Overseas Property Group nil;

(b) The Republic of Austria: Federal Ministry of Foreign Affairs nil and Office of the Federal President US$137,985;

(c) The People's Republic of Bangladesh: Ministry of Labour and Manpower US$1,232,583;

(d) The Republic of Finland: Ministry of Foreign Affairs US$297,557;

(e) The Federal Republic of Germany: Federal Ministry for Research and Technology US$2,699; Hessian Ministry for Women, Labour and Social Affairs US$3,020; Government of Bavaria US$14,409 and Federal Office of Administration nil;

(f) Ireland: Department of Defence US$70,615;

(g) The Italian Republic: Institute for Foreign Trade US$35,401;

(h) The Lebanese Republic: Ministry of Foreign Affairs US$24,560;

(i) The Russian Federation: Ministry of Foreign Affairs US$1,856,393;

(j) The Kingdom of Spain: Ministry of Foreign Affairs US$416,402;

(k) The Syrian Arab Republic: Central Bureau of Statistics nil and Foreign Ministry (Embassy of Syrian Arab Republic in Kuwait) nil;

(l) The Kingdom of Thailand: US$6,248,908;

(m) The Kingdom of Great Britain and Northern Ireland: Commonwealth War Graves Commission nil; Department of Social Security US$26,423 and Ministry of Defence US$2,685,684; and

(n) The United States of America: Department of Defense US$322,206; Department of Health and Human Services US$1,085,995; and United States Information Agency US$192,926.

Geneva, 22 January 1999

(Signed) Bjørn Haug
Chairman

(Signed) Georges Abi-Saab
Commissioner

(Signed) Michael J. Bonell
Commissioner

Notes

1/ Governing Council decision 10, "Provisional Rules for Claims Procedure" (S/AC.26/1992/10).

2/ The amounts are those that appear in the Claimants' claim forms. Where admissible supplements have been filed or amendments have been made to a Claim, the Panel has based its recommendation on the amended total. While many Claims were originally stated in other currencies, the amounts claimed are stated in United States dollars in order to facilitate comparison. This does not prejudice the Panel's determinations of the amounts, if any, recommended for compensation. In respect of claims filed in other denominations, the United States dollar amounts have been calculated by using the August 1990 rates of exchange as indicated in the United Nations Monthly Bulletin of Statistics.

3/ Category "C" claims are individual claims for damages up to US$100,000 and category "D" claims are individual claims for damages over US$100,000. Pursuant to Governing Council decision 1 (S/AC.26/1991/1), as confirmed in paragraph 3 of Governing Council decision 13 (S/AC.26/1992/13), questions of multiple recovery do not arise in relation to payments made under category "A" (departure claims).

4/ Governing Council decision 18, "Distribution of Payments and Transparency" (S/AC.26/Dec.18 (1994)).

5/ "Report and Recommendations made by the Panel of Commissioners concerning Part One of the First Instalment of Claims by Governments and International Organizations (Category 'F' Claims)" (S/AC.26/1997/6), ("the First Report"), paras. 47-64. See also "Report and Recommendations made by the Panel of Commissioners Concerning Part Two of the First Instalment of Claims by Governments and International Organizations (Category 'F' Claims)" (S/AC.26/1998/4), ("the Second Report"), para. 45; and "Report and Recommendations made by the Panel of Commissioners concerning the Second Instalment of 'F1' claims" (S/AC.26/1998/12), ("the Third Report"), para. 75.

6/ The First Report, para. 74. See also the Second Report, paras. 55-56 and the Third Report, paras. 78-79.

7/ The Third Report, para. 81.

8/ Ibid.

9/ The First Report, para. 74 and the Third Report, para. 81.

10/ The First Report, para. 68.

11/ The Third Report, paras. 83-85. See also the First Report, paras. 67-68.

12/ The Third Report, para. 76.

13/ The First Report, paras. 71-73. See also the Second Report, paras. 63 and 73 and the Third Report, paras. 90-92.

14/ The First Report, paras. 76-78. See also the Third Report, para. 94.

15/ The Third Report, para. 76.

16/ The First Report, para. 85.

17/ The Third Report, para. 97.

18/ Governing Council decision 7, "Criteria for additional Categories of Claims", (S/AC.26/1991/7/Rev.1).

19/ The Panel adopted a similar approach in the First Report with regard to support payments made by Governments, which were limited to the maximum period for which individuals would have been compensated for income losses in category "C". The First Report, para. 86.

20/ The Third Report, para. 76.

21/ The First Report, para. 85.

22/ "Report and Recommendations made by the Panel of Commissioners concerning the First Instalment of Individual Claims for Damages up to US$100,000 (Category "C" Claims)" (S/AC.26/1994/3) ("First "C" Report"), pp. 192-93.

23/ The First Report, para. 86.

24/ The First Report, para. 84.

25/ See the First Report, paras. 92-96 and the Third Report, paras. 100-111.

26/ The Third Report, paras. 120-121.

27/ The First Report, para. 85.

28/ Ibid.

29/ The Third Report, paras. 105-106.

30/ The Third Report, para. 122.

31/ The First Report, para. 96.

32/ The Third Report, para. 119.

33/ The Third Report, para. 101.

34/ The Third Report, para. 121.

35/ Ibid.

36/ Governing Council decision 9, "Propositions and Conclusions on Compensation for Business Losses: Types of Damages and Their Valuation",

(S/AC.26/1992/9).

37/ The First Report, paras. 99-102.

38/ United Nations Monthly Bulletin of Statistics, Vol. XLV, No. 4, April 1991, (ST/ESA/STAT/SER.1/220).

39/ Governing Council decision 16, "Awards of Interest", (S/AC.26/1992/16).

40/ See the First Report, para. 62.

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SPECIAL REPORT AND RECOMMENDATIONS MADE BY THE CATEGORY "D" PANEL OF COMMISSIONERS CONCERNING 636 PAKISTANI CLAIMS FOR DEPARTURE FROM IRAQ OR KUWAIT (CATEGORY "A" CLAIMS)

GE.99-62824

Introduction

1. This Special Report contains the recommendations to the Governing Council of the United Nations Compensation Commission (the "Commission"), submitted pursuant to article 37(e) of the Provisional Rules For Claims Procedure ("the Rules") by the Panel of Commissioners appointed to review individual claims for damages above US$100,000 (i.e., the category "D" Panel). The category "D" Panel has been instructed by the Governing Council to review 639 Pakistani category "A" claims for departure from Iraq or Kuwait in the following special circumstances communicated to the Panel by the Commission's secretariat:

(a) On 5 August 1997, the Permanent Mission of Pakistan in Geneva notified the secretariat that, according to the records maintained by the Government of Pakistan, 639 category "A" (departure from Iraq or Kuwait) claims filed with the Commission were still pending in spite of the fact that the category "A" Panel of Commissioners had finalized its resolution of the claims in that category in October 1996. The Mission provided a list of the 639 claims in question and requested their consideration by the Commission on a priority basis. On 4 March 1998, the Mission renewed its request for a status report on the 639 category "A" claims.

(b) The discrepancy between the category "A" claims' numbers maintained by the Commission and those kept by Pakistan was resolved in August 1998 when it was discovered that the 639 claims in question had actually been filed with the Commission on 10 June 1993 by the Government of Pakistan as part of Lot 823. However, the computer diskette containing the claims submitted by the Government of Pakistan had been mislabelled as a duplicate of Lot 156, which had been previously filed by Pakistan. Since it was assumed that the diskette constituted a duplication of previously registered category "A" claims, the 639 Pakistani claims were never entered into the Commission's category "A" database. Not having been put into the database, the 639 claims were not resolved by the category "A" Panel of Commissioners in any of its six instalments of claims that were approved by the Governing Council between October 1994 and October 1996.

© At the thirty-first session of the Governing Council in March 1999, an information note was provided to the Council by the secretariat explaining that the failure to load the Pakistani diskette into the database meant that claimants for whom the Government of Pakistan had filed claims on time with the Commission have not yet had their claims resolved. In order to rectify the situation it would be necessary for these claims to be put before a Panel of Commissioners so that awards could be issued for the claimants. The Council's guidance was sought as to the manner in which to proceed to resolve the 639 Pakistani category "A" claims.

(d) Having considered the issue and the information note, the Governing Council, at the thirty-first session, accepted the recommendation of its Working Group that, rather than recalling the category "A" Panel of

Commissioners (which ceased functioning in October 1996) to consider the unresolved Pakistani claims, the claims would be put before the category "D" Panel of Commissioners. In reviewing the Pakistani claims, the category "D" Panel of Commissioners, which had deliberative sessions already scheduled for March and April 1999, was instructed by the Governing Council to apply the same processing methodologies (including evidentiary standards) that had been employed by the category "A" Panel of Commissioners. The category "D" Panel was also instructed to submit a special report and recommendations on the Pakistani claims to the Governing Council for consideration at its thirty-second session in June 1999.

2. Subsequent to the thirty-first Governing Council session, it was determined by the secretariat that the mislabelled computer diskette contained only 636 valid claims rather than 639, as indicated in the previously referenced notes of the Permanent Mission of Pakistan. One claim in the diskette was a duplicate of a claim already reported in the fourth instalment of category "A" claims. Two other entries in the diskette concerned non-existent claims.

3. The category "D" Panel notes that the category "A" claims are claims for departure from Iraq or Kuwait during the period of 2 August 1990 to 2 March 1991 and that these claims are among the "most urgent claims" for which the Governing Council's decision on the "Criteria for Expedited Processing of Urgent Claims" (S/AC.26/1999/1) ("decision 1") has set forth "simple and expedited procedures" in order to provide "prompt compensation in full" or "substantial interim relief". Furthermore, the evidentiary standard applicable to category "A" claims is stated in decision 1 and more specifically in article 35(2)(a) of the Provisional Rules for Claims Procedure, which reads:

> "For the payment of fixed amounts in the case of departures, claimants are required to provide simple documentation of the fact and date of departure from Iraq or Kuwait. Documentation of the actual amount of loss will not be required".

4. The expedited procedures prescribed by article 37(a) of the Rules envisaged that in the initial phase the secretariat would check individual claims by matching them, insofar as possible, against the information in its computerized database, and that the results of the database analysis may be cross-checked by the Panel. The next processing phase relates to claims that could not be verified through the computer database. Article 37(b) of the Rules provides that, if the volume of these claims is large, the Panel may check individual claims on the basis of sampling with further verification as circumstances warrant. After resolving close to 350,000 category "A" claims in the first three instalments submitted to it through matching, the category "A" Panel commenced the second phase of verification on the basis of sampling, as envisaged by article 37(b) of the Rules.

5. As it was no longer feasible to revive the computerized programme used by the category "A" Panel in its first three instalments to "match" claimant data with arrival/departure data, the category "D" Panel has confined its analysis of the 636 Pakistani category "A" claims to the sampling procedures employed by the category "A" Panel for its fourth to sixth instalments. The methodology employed by the category "A" Panel of Commissioners in verifying claims by means of sampling was described in that Panel's Report and Recommendations Concerning the Fourth Instalment of Claims for Departure from Iraq or Kuwait (Category "A" Claims) (S/AC.26/1995/4) in paragraphs 45 to 88.

6. While establishing the sampling methodology, the category "A" Panel reviewed the law and practice under international law and national jurisdictions and drew attention to the growing acceptance and application of the principle of adjudication on the basis of sampling and test cases in situations involving a large number of cases or claims raising common issues of law or fact. This has been prompted by the realization of the inappropriateness of the traditional method of individualized adjudication in the case of mass claims and analogous situations. In regard to the application of the sampling methodology, the category "A" Panel observed in its Fourth Instalment Report:

> "Since determining the appropriate sample is a statistical exercise, professional statisticians were consulted for the purpose of calculating the size and defining the composition of the samples. In light of the lack of homogeneity among the claims submissions from and the processing used by the various submitting countries and international organizations it was decided that the sampling operation should be country-specific (rather than across all category "A" claims) so as to increase the homogeneity of the population from which the samples were to be chosen, and thereby to improve the results of the extrapolation." (Paragraph 46.)

I. BACKGROUND TO PAKISTANI CATEGORY "A" CLAIMS

7. 32,247 category "A" departure claims from Pakistan were entered into the Commission's database. Of that figure, 31,836 were determined to be successful by the category "A" Panel of Commissioners and the corresponding claimants were awarded a total of US$124,992,500 in compensation by the Governing Council. With respect to the 411 Pakistani category "A" claims for which no compensation was recommended, 410 were found to be duplicates of claims for which compensation had already been awarded. Only one Pakistani category "A" claim was rejected by the category "A" Panel on the basis that the evidence provided demonstrated that the claimant departed from Iraq or Kuwait outside the Commission's relevant jurisdictional period of 2 August 1990 to 2 March 1991.

8. The category "A" Panel of Commissioners' resolution of the Pakistani claims took place over the course of six instalments between 3 June 1994 and

16 October 1996. During the first three instalments of category "A" claims, 7,808 Pakistani claims were approved by means of the category "A" Panel's application of the expedited processing procedures provided by article 37(a) of the Rules that involved verification by "matching" the claims against information in the Commission's computerized database. In the fourth, fifth and sixth instalments of claims, the category "A" Panel approved 24,028 Pakistani claims by verifying individual claims on the basis of sampling, an expedited procedure authorized by article 37(b) of the Rules.

9. The category "D" Panel notes that, had the mislabelled Pakistani claims diskette been entered into the Commission's category "A" database at the time of its filing with the Commission in June 1993, the 636 claims in question would have been subjected to the same expedited claims processing procedures as the 32,247 other Pakistani claims resolved by the category "A" Panel. The task for the category "D" Panel therefore is to satisfy itself that the claims that may be approved by it out of the 636 mislabelled Pakistani category "A" claims share the same claims profile and possess the same types of supporting evidence as the 24,028 other Pakistani claims that were approved by the category "A" Panel prior to October 1996 by application of the sampling methodology.

II. THE CATEGORY "A" PANEL'S ANALYSIS OF THE PAKISTANI DEPARTURE CLAIMS

10. In conducting its sample of the Pakistani category "A" claims, the category "A" Panel of Commissioners examined the types of evidence provided by 290 claimants to prove their presence in Iraq or Kuwait as of 2 August 1990 and their subsequent departure between the time of Iraq's invasion of Kuwait and 2 March 1991. The category "A" claim form listed seven types of documents that the claimants could submit in support of their claims. Claimants were required by the category "A" claim form to indicate the evidentiary items that they attached to their forms. For this purpose, claimants could tick one or more of six boxes representing the following types of evidence: Copy of Official ID issued by Iraq or Kuwait, Used Tickets, Visa/Passport Stamp, Boarding Pass, Receipts/Bills and Other.

11. In addition, the category "A" claim form also requested the Pakistani claimants to attach a statement to their claims including the address of the claimants' last residences and the last places of work in Iraq or Kuwait and to describe how they travelled from Iraq or Kuwait back to Pakistan. Although the category "A" paper claim form did not provide a tick box for claimants to check whether they had included such statements, the category "A" Data Capture System software (DCS) did. Thus, it was possible for the category "A" Panel to analyze the distribution of evidence among the entire Pakistani category "A" claims population, including whether the required additional statement had been submitted, by means of a review of the category "A" claims database. By analyzing the information in the database, the category "A" Panel was able to ascertain how many Pakistani category "A" claimants had attached Official IDs, Used Tickets, the required additional statement, etc. to their claims forms.

12. Evidence of Pakistani category "A" claims that clearly demonstrated departure from Iraq or Kuwait during the jurisdictional period was assessed as "conclusive" by the category "A" Panel of Commissioners. In reviewing its sample of Pakistani category "A' claims, the category "A" Panel of Commissioners determined that 96 per cent of the sample claims conclusively demonstrated their departure from Iraq or Kuwait during the jurisdictional period. More importantly, 99 and 98 per cent of the Pakistani claimants attaching the two most common types of supporting documentation to their claims forms, i.e., Official IDs and Visa/Passport Stamps, were respectively found to have conclusively demonstrated their departure from Iraq or Kuwait. With the percentage of "conclusive" claims within the most common evidentiary types being so high, the category "A" Panel of Commissioners was able to extrapolate the results of the sample to the entire Pakistani category "A" claims population and recommended that all Pakistani claimants in the overall population of claims submitting the same types of "conclusive" evidence would be entitled to compensation. In this way, the category "A" Panel of Commissioners recommended compensation for 24,028 Pakistani category "A" claims.

III. THE PANEL'S REVIEW OF THE 636 PREVIOUSLY UNPROCESSED PAKISTANI CATEGORY "A" CLAIMS

13. In order to determine whether the conclusions reached by the category "A" Panel of Commissioners could be applied to the 636 Pakistani category "A" claims included in the mislabelled diskette, the category "D" Panel needed to assure itself that the 636 claims fit the profile of the overall Pakistani category "A" claims population. In addressing this issue, the category "D" Panel made use of a Summary Report of computerized claims information that the secretariat prepared, which compared the types of evidence provided by the 32,247 Pakistani category "A" claimants as a whole to the 636 specific claims under review. The Summary Report is attached as Annex I to this Report. The category "D" Panel also viewed some of the files in electronic format to be able to test the application of the sample developed by the category "A" Panel. The category "D" Panel's analysis showed that the evidentiary profile of the 636 claims matched very closely that of the entire Pakistani category "A" population. While 75.34 per cent of the total claims population had submitted Official ID evidence, 76.46 per cent of the 636 claims had done likewise. Similarly, 83.02 per cent of the total claims population had provided Visa/Passport Stamp evidence and 81.6 per cent of the 636 claimants had done the same. Finally, while 99.28 per cent of the total Pakistani claims population had attached a statement to their claim forms, 100 per cent of the 636 claimants had done so.

14. Accordingly, based on the category "D" Panel's comparative analysis of the evidence attached to the claim forms, the 636 Pakistani category "A" claims under review have been found by the category "D" Panel to accord with the profile of the Pakistani category "A" claims population as a whole. Having reached this conclusion, the category "D" Panel has determined that the 636 Pakistani category "A" claimants are entitled to the same

recommendation as to compensation made by the category "A" Panel of Commissioners with regard to the overall population of category "A" claims.

IV. RECOMMENDED COMPENSATION FOR THE 636 PAKISTANI CATEGORY "A" CLAIMS

15. Pursuant to article 37(e) of the Rules, the category "D" Panel presents its recommendations regarding the 636 Pakistani category "A" claims. Having considered the results of the analysis of the verification of the category "A" claims through sampling and having reviewed the evidence submitted to it in support of the claims at issue, the category "D" Panel recommends the payment of compensation for the 636 claims submitted by the Government of Pakistan on 10 June 1993 in Lot 823 in the total amount of US$2,558,500.

16. On the basis of the considerations formulated in Part IV, section C, sub-section 3. of the first report of the category "A" Panel, the category "D" Panel recommends that interest should be paid on the awarded amounts in category "A" claims in accordance with the Governing Council's decision on "Awards of Interest" (S/AC.26/1992/16) ("decision 16"). The category "D" Panel also adopts the view expressed by the category "A" Panel that the phrase "the date the loss occurred" in decision 16 should be interpreted to be a single date for all category "A" claims and that the date of invasion, 2 August 1990, should serve as the fixed date.

Geneva, 27 April 1999

(Signed) R.K.P Shankardass
Chairman

(Signed) H.M. Joko Smart
Commissioner

(Signed) M.C. Pryles
Commissioner

Annex I

SUMMARY REPORT
PAKISTAN
(Mislabelled claims)

1. Submitting entity: Pakistan

2. Total No. of claims (excluding 636 claims): 31,813

3. Total No. of mislabelled claims: 636

Type of evidence claims	Percentage and total per type in claims population	Percentage and total per type in 636 mislabelled claims
I. Official ID	75.34% (23,968)	76.42% (486)
II. Used Tickets	3.90% (1,242)	1.42% (9)
III. Visa/Passport Stamp	83.02% (26,410)	81.60% (519)
IV. Boarding Pass	2.96% (942)	0.63% (4)
V. Receipts/Bills	2.86% (909)	0.47% (3)
VI. Other	17.73% (5,640)	5.19% (33)
VII. Statement	99.28% (31,584)	100.00% (636)

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COMPENSATION COMMISSION
GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE THIRD INSTALMENT OF INDIVIDUAL CLAIMS FOR DAMAGES ABOVE US$100,000 (CATEGORY "D" CLAIMS)

GE.99-62838

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Introduction

1. This is the fifth report to the Governing Council of the United Nations Compensation Commission (the "Commission") submitted pursuant to article 38(e) of the Provisional Rules for Claims Procedure (the "Rules"), by the Panel of Commissioners (the "Panel") appointed to review individual claims for damages above US$100,000 (category "D" claims). [1] This report contains the determinations of the Panel in respect of the third instalment, comprising 440 category "D" claims, submitted to the Panel by the Executive Secretary of the Commission, pursuant to article 32 of the Rules.

2. The Panel began its review of the third instalment in July 1998 when it issued the related procedural order. The third instalment is made up of claims which contain loss types for which methodologies were developed during the consideration of claims in the first and second instalments, ("application claims"). [2] In addition to regular communications, the Panel met with the secretariat at the Commission's headquarters in Geneva to consider claims in the third instalment on the following dates: 27-29 July 1998, 16-18 November 1998, 21-22 December 1998 and 25-27 January 1999.

3. At each meeting held to consider claims in the third instalment, the Panel reviewed a number of claims with new issues that had not arisen in previous instalments. The Panel also examined the application of the methodologies already developed and satisfied itself that the appropriate methodologies had been applied to each loss claimed.

I. BACKGROUND

A. Background information

4. The factual background relating to Iraq's invasion and occupation of Kuwait that was taken into account by the Panel in reviewing claims in this third instalment, is set out in detail in the First and Second Reports [3].

5. The Panel has also taken into consideration additional relevant material, including information accompanying the submission of the third instalment of claims provided by the Executive Secretary pursuant to article 32 of the Rules and additional information and views presented by Governments that have submitted claims, and by the Government of Iraq, in response to the reports submitted to the Governing Council by the Executive Secretary in accordance with article 16 of the Rules.

B. General legal framework

6. The general legal framework for the resolution of category "D" claims is set out in chapter V of the Panel's First Report.

C. Applicable evidentiary standard

7. The issue of evidentiary standards to be applied in reviewing category "D" claims was addressed by the Panel in chapter VI of the First Report and chapter II of the Second Report. [4] These two reports were approved by the Governing Council in decisions 47 and 49 respectively. [5] As with the first and second instalments, the Panel has reviewed the claims in the present instalment and made its recommendations by assessing the documentary and other appropriate evidence as well as balancing the interests of claimants, who had to flee a war zone, with the interests of the Government of Iraq, which is liable only for damages caused as a direct result of its invasion and occupation of Kuwait.

II. NEW ISSUES ARISING IN APPLICATION CLAIMS

8. As indicated above, some of the application claims in this instalment raise new issues that were not dealt with in either the First or Third reports. These new issues and the Panel's determinations on those issues are set out in this section.

A. D1(money) issues: Claims for departure expenses incurred outside the jurisdictional period

9. The Panel considered claims submitted by individuals who had incurred D1(money) expenses outside the period 2 August 1990 - 2 March 1991 (the "jurisdictional period"). While the claimants had themselves departed during the jurisdictional period, expenses such as furniture transport costs were not incurred until after 2 March 1991. The Panel determined that in order to be considered for compensation, in addition to proper documentary evidence of the expenses claimed, there must be an acceptable explanatory statement [6] as to why the expenses claimed were incurred outside the jurisdictional period and their relation to Iraq's invasion and occupation of Kuwait.

B. D1(MPA) issues

10. A number of D1(MPA) claims are submitted on behalf of minors, ranging from newborns to adolescents, for forced hiding during Iraq's invasion and occupation of Kuwait. The Panel took cognizance of the circumstances of forced hiding by family groups during the jurisdictional period and considered the question of the ability of a child to experience a "manifestly well-founded fear for one's life or of being taken hostage or illegally detained". [7] The Panel determined that children who had learnt to walk and had to be restrained and confined would be capable of experiencing such fear. Accordingly, the Panel considered that a child of two years or older would be considered capable of experiencing a "manifestly well-founded fear" for the purposes of D1(MPA) claims.

C. D2(personal injury) issues

1. Determination of applicable deemed income

11. The Panel considered a personal injury claim where the victim was a non-Kuwaiti injured in Kuwait who took treatment in a third country. The Panel determined that for the purposes of calculating the recommended D2(personal injury) award and assigning a deemed income to the injured person, the deemed income should take into account the location of the injury. Since the injury occurred in Kuwait, the deemed income for Kuwait was used for calculating the recommended award.

2. Concurrent claims for D2(personal injury) and D6(loss of income)

12. The Panel considered whether individuals who had claimed losses under both D2(personal injury) and D6(loss of income) could receive concurrent awards for both loss types. The Panel concluded that although both loss types contemplate loss of income as an element of compensation, concurrent awards would not result in overlapping compensation as the D6 loss relates to the loss of a specific term of employment and the D2 loss relates to the inability of the claimant to continue to earn income due to injury.

3. Claims arising out of multiple sexual assaults

13. The Panel considered the language of decision 8 of the Governing Council in the light of mental pain and anguish claims where consecutive multiple sexual assaults had occurred. Decision 8 establishes a ceiling of US$5,000 "per incident" of sexual assault while a ceiling of US$30,000 per individual is set for all types of MPA claimed. The Panel decided that, in the case of consecutive multiple assaults which occurred on the same occasion, each assault should be viewed as an "incident" within the language of decision 8, having regard to the comparative severity of the mental pain and anguish suffered by a victim of multiple assaults versus a single assault. Accordingly, the Panel determined that the victim would be entitled to US$5,000 for each incident of sexual assault, up to a maximum of US$30,000.

4. Claims for development of abnormalities during pregnancy

14. Claims for pre-natal injuries caused to a child should be considered compensable losses where a direct causal link between the physical condition that caused the injury and Iraq's invasion and occupation of Kuwait can be established. In one claim, the Panel determined that the medical evidence established that pregnancy complications arising from a scud missile attack resulted in foetal stress causing the child to be born with severe brain damage. The Panel has recommended an award of compensation on the basis that the injury to the child was directly caused by military operations of Iraq in the context of Iraq's occupation of Kuwait.

5. Claims concerning congenital conditions

15. The Panel considered a claim by a mother on behalf of her son who was five years old at the time of an Iraqi missile strike near their home. The mother alleges that she noticed a squint in her son's left eye which rapidly deteriorated to complete esotropia (a rotation of the eyeball towards the nose) and loss of vision. The boy underwent two operations in an effort to correct the problem, but without success. Two medical reports were provided, both of which left in considerable doubt the connection between the esotropia and the emotional trauma. One report noted that the mother had a history of esotropia.

16. The Panel found that the claimant had not established a clear causal link between the onset of the esotropia and the scud missile attack. The Panel also took into account the fact that there was a family history of the condition and determined that without a clear link between the onset of the condition and Iraq's invasion and occupation of Kuwait, no compensation could be awarded.

D. D3(death) issues: Claims for missing persons

17. The Panel considered a D3(death) claim for a missing person where the claimant had not provided proof of death. Having regard to the passage of time between the submission of the original claim and the processing of the claim, the Panel was of the view that the claimant should be contacted in order to determine whether there was any further information available concerning the missing person since the submission of the claim or whether the claimant was able to furnish appropriate evidence of death. After having made a request of the claimant for such further evidence and receiving no response, the Panel determined that no compensation could be awarded.

E. D6(loss of income) issues

1. Claims for farm subsidies

18. A number of individuals claim under D6(loss of income) for loss of support in connection with farm operations in Kuwait. The claimants were lessees of land from the Kuwait Department of State Properties and were licensed to exploit the land for agricultural purposes. Before Iraq's invasion, the lessees received government support from the General Authority for Agriculture for their farming activities and they now claim compensation in respect of the government subsidy that they would have received in 1991 and 1992.

19. The Panel considered that, generally, losses suffered by farming operations that were shown to be directly related to Iraq's invasion and occupation of Kuwait could be compensable. However, as the claimants were not engaged in any farming operations during the period claimed for, non-receipt of a subsidy would not constitute a compensable loss to the claimants. The Panel has therefore recommended that no compensation be awarded for failure to receive the subsidy.

2. Claims for loss of income where the claimant was re-employed during the jurisdictional period

20. A number of individuals who had submitted D6(loss of income) claims relating to their employment which was terminated at the time of the invasion were able to secure new employment during the jurisdictional period. The Panel considered a claimant's duty of mitigation in the employment loss context and general principles of damages in determining how to treat income from such new employment in the calculation of compensation. The Panel took cognizance of the Background Report on Employment Claims prepared for the Commission by an international labour expert [10] and concluded that the duty to mitigate the employment loss was already built into the methodology employed by the Commission.

21. The Panel therefore determined that, as a general rule, income from new employment secured after 2 August 1990 will not be deducted from the recommended award calculated under the D6 methodology as it is already accounted for in the methodology. However, the Panel would review on an individual basis any case where the claimant earned substantial income from the new employment.

3. Claims with proof of employment but no evidence of income earned

22. In instances where claimants have provided proof of employment at the time of Iraq's invasion of Kuwait but have been unable to provide documentary evidence of their salary, the Panel determined that the "Table of Average Wages of Paid Employment in the Labour Force" included in the PAAC "C" Covering Report, could be used to calculate compensation based upon statistical information concerning the claimants' type of employment and nationality. [11] The Panel emphasized that both the fact of employment and an employment-related loss would have to be clearly established in order for the claimant to receive compensation using the PAAC monthly income figures.

F. D(other) issues

1. Claims arising from fines imposed by courts in Iraq

23. The Panel considered claims for fines paid by the claimant to a court in Iraq and claims for funds confiscated pursuant to a court order issued by a court in Iraq. The Panel determined that where the fines levied by the court or the court-ordered confiscation of funds were directly related to Iraq's invasion and occupation of Kuwait, the amounts lost would be compensable. The Panel decided that where the amounts lost are evidenced by a court order, the claimant should provide the original or a certified copy of the court order to the Panel for confirmation.

2. Claims arising out of bribes paid

24. A claimant who was visiting Iraq at the time of Iraq's invasion of Kuwait states that he paid bribes to various "guards, drivers, judges and other authority figures" to secure his release after having been taken into custody in Iraq. The Panel considered whether amounts allegedly paid as bribes to secure a person's release from detention in Iraq were directly related to Iraq's invasion and occupation of Kuwait and what would constitute sufficient proof of payment of such bribes.

25. The Panel considered that such claims would have to be reviewed in the light of the circumstances of each case and the evidence provided. The Panel held that in the present case the claimant had failed to provide any acceptable evidence and concluded that no award be recommended.

III. REVIEW OF PREVIOUS PANEL DECISIONS

A. D6(loss of income): End of service indemnities

26. In the Third Report, the Panel noted that some of the non-Kuwaiti public sector employees employed in Kuwait prior to Iraq's invasion and occupation of Kuwait had acknowledged receiving end of service indemnities from their employers. [12] The Panel had taken into consideration the fact that end of service indemnities had already been factored into the D6(loss of income) salary multiplier and determined that, where evidence existed that a claimant had received end of service indemnities, those amounts should be deducted from the recommended amount of compensation.

27. Subsequent to its decision in the Third Report, the Panel received information from the Government of Kuwait concerning the nature and method of calculation of the end of service indemnities. After a review of this information, the Panel has come to the conclusion that such end of service indemnities were in fact in the nature of superannuation, a non-contributory service benefit accrued over time by the employee, and were payable to the employee in any event at the time of termination. The Panel also took note of the fact that the Government of Kuwait did not file a claim with the Commission for the reimbursement of these benefits.

28. In the light of this further information, the Panel determined that such end of service indemnities could not be deducted from the recommended awards calculated under the D6(loss of income) methodology and that, where necessary, amendments should be made to any claims from previous instalments where end of service indemnities had been deducted from the recommended awards. Such corrections will be recommended in reports on subsequent instalments.

IV. PANEL DETERMINATIONS ON OTHER CLAIMS IN THE THIRD INSTALMENT

29. In the course of reviewing and checking the application of the methodologies to the claims in the third instalment, the Panel made a number of additional determinations.

30. The D2(personal injury) claims reviewed by the Panel included claims for injuries which had occurred outside the jurisdictional period. The Panel affirmed that in order for such injuries to be compensable, the claimant had to demonstrate a clear and direct connection between the injury and Iraq's invasion and occupation of Kuwait. In one claim, the Panel determined that since the claim of a child born with severe brain injuries had been recommended for compensation (referred to at paragraph 14, supra), the father's claim should be rejected as it duplicated the same loss. In another case, the Panel held that where a claimant failed to tick the D2(MPA) box on the claim form, but clearly demonstrated MPA in the attached statement, the claimant could receive compensation for MPA.

31. The Panel noted that a small number of claims with D4(personal property) losses had been inadvertently included in the third instalment. The Panel held that since the D4(personal property) methodology had been developed and approved by the Commission's Governing Council before the completion of the third instalment, it was able to make recommendations for these claims.

32. In both the First and Third Reports, the Panel considered the compensability of D6(loss of income) claims by the employees of the London branch of an Iraqi state owned bank which closed down shortly after Iraq's invasion of Kuwait. The Panel concluded then that such claims would be compensable regardless of the location of the loss if the loss was shown to be directly related to Iraq's invasion and occupation of Kuwait. In this instalment, one such bank employee was not compensated for the claimed loss of income because the Panel determined that the termination of the claimant's employment in July 1993 was no longer directly related to the invasion and occupation due to the time that had elapsed since the invasion and occupation.

33. The Panel considered a claim submitted under D6(loss of income) in relation to an individual's subcontracts for services. The trigger for payment under the subcontracts was the invoicing of the work by the contractor or delivery of the completed works according to the project schedule. The Panel held that because the projects that were the subject of the contracts did not go forward or were cancelled, the trigger for payment under the subcontracts did not occur and therefore no compensation was recommended.

34. A number of individuals filed claims under D6(loss of income) which are more properly categorized as D8/9(business loss) claims. The Panel determined that such claims could not reasonably be processed under the existing methodologies, and therefore directed that the claims be deferred for consideration with individual business loss claims.

35. The Panel reviewed a number of claims in which individuals claimed for judgment debts that pre-dated Iraq's invasion and occupation of Kuwait. The Panel determined that where the judgment debtor continues to exist, or where the claimant has failed to make sustained attempts to collect on the judgment debt, the claims are not compensable. The Panel determined that to be eligible for consideration, the claimant must establish that the disappearance or insolvency of the judgement debtor is directly related to the invasion and occupation.

V. RECOMMENDATIONS

A. Awards by submitting entity

36. The annex hereto lists the awards recommended by the Panel for each Government and international organization that has claimants included in the third instalment. Each Government and international organization will be provided with a confidential list containing the individual recommendations made in respect of its claimants. As will be seen from the annex, against the total amount claimed of US$102,987,603.71, the Panel has recommended compensation totalling US$19,502,642.64.

B. Interest and exchange rates

37. The Panel recommends that interest be awarded pursuant to its determinations as set out in chapter V, section H of the First Report.

38. For purposes of calculating recommended amounts, the Panel has converted currencies other than United States dollars pursuant to its determinations set out in chapter V, section G of the First Report.

39. Where losses are claimed for money in currencies other than United States dollars and it is established from the evidence in the claim file that the application of the exchange rate approved by the Panel mentioned above, would result in either under-compensation or over-compensation of the claimant, the Panel determined that it will select a conversion rate based on the evidence that most closely compensates the claimant for the value of the loss suffered. This would be applied in situations, in particular, where the claimant has submitted evidence that he or she purchased the money at a rate different to the rate approved by the Panel.

C. Submission through the Executive Secretary to the Governing Council

40. The Panel respectfully submits this report through the Executive Secretary to the Governing Council, pursuant to article 38(e) of the Rules.

Geneva, 26 January 1999

(Signed) R.K.P. Shankardass
Chairman

(Signed) H.M. Joko-Smart
Commissioner

(Signed) M. C. Pryles
Commissioner

Notes

1/ S/AC.26/1992/10.

2/ In the first instalment of category "D" claims, the Panel developed methodologies for the following loss types: D1(money); D1(mental pain and anguish ("MPA"); D3(death); D4(motor vehicles); D6(loss of income); D10(payment or relief to others); and D10(other). A full description of the methodologies is set out at paragraphs 103 to 382 of the "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the First Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1998/1)("First Report"). The Panel developed methodologies for the following loss types in part one of the second instalment: D2(personal injury) and D5(loss of bank accounts, stocks and other securities). These methodologies are described in the "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the Second Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" ("Third Report"), at paragraphs 41-116.

3/ See in particular chapter II of the First Report and chapter IV of the "Report and Recommendations Made by the Panel of Commissioners Concerning Part Two of the First Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1998/3) ("Second Report").

4/ See also paragraph 8 of Goverring Council decision 7 which provides that "[s]ince ... [D] claims may be for substantial amounts, they must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss" (S/AC.26/1991/7/Rev.1). See also articles 35(2) and (3) of the Rules.

5/ S/AC.26/Dec.47 (1998) and S/AC.26/Dec.49 (1998).

6/ See paragraph 75 of the First Report for the Panel's elaboration on an "acceptable explanatory statement".

7/ See paragraph 3(f) of Governing Council Decision 3 (S/AC.26/1991/3).

8/ See paragraph 70 of the Third Report for an explanation of how the "deemed income" is determined. The deemed annual income for Kuwait was established by the Panel as being KWD 6000 pursuant to the "Table of Average Wages of Paid Employment in the Labour Force" which is part of a report entitled "Ministry of Planning Final Results Labour Force Survey, March 1988 (Part I)", contained in the "Covering Report and Supporting Materials for Claims in Category C Submitted to the United Nations Compensation Commission by the Public Authority for Assessment of Compensation for Damages Resulting from Iraqi Aggression, Government of the State of Kuwait, 14 April 1994" ("PAAC 'C' Covering Report").

9/ S/AC.26/1992/8

10/ "Background Report on Employment Claims (C6)" prepared for the Commission by Alan Gladstone, December 1993.

11/ See note 8.

12/ See the Third Report at paragraphs 32 and 33.

Annex

Summary Recommendations of the Third Instalment of Category "D" Claims

Submitting Entity	Amount Claimed (US$)	Number of Claims Recommended	Number of claims Not Recommended for Payment	Amount of Compensation (US$)
Australia	736,769.70	2	1	167,664.83
Canada	3,503,652.98	16	4	562,930.19
Egypt	450,160.77	--	1	0.00
France	131,150.00	--	1	0.00
Germany	42,547.71	1	0	22,837.40
Hungary	38,266.00	1	--	38,266.00
Iceland	146,186.85	1	--	9,055.73
Ireland	3,730.00	--	1	0.00
India	27,301,610.73	40	8	1,501,591.52
Israel	18,963,200.00	7	--	236,713.64
Italy	224,803.00	2	3	51,712.79
Jordan	26,671,914.05	97	9 1/	5,145,257.40
Kuwait	5,667,709.81	90	15 2/	5,664,171.70
Lebanon	373,002.32	2	1	119,148.33
Philippines	106,342.82	1	--	48,957.18
Pakistan	71,169.55	1	--	35,584.80
Sudan	1,075,812.83	7	--	377,168.50
Sweden	94,735.00	1	--	94,735.00
Syria	194,989.00	--	1	0.00
United Kingdom	10,149,981.48	54	9 3/	3,132,729.79
United States	6,296,172.94	50	6	2,161,993.73
UNDP (Washington)	263,927.78	1	3	7,958.00
UNRWA (Gaza)	271,589.29	3	0	124,166.11
Total	102,779,424.61	377	63	19,502,642.64

1/ One claim from Jordan has been deferred.

2/ Six claims from Kuwait were deferred.

3/ One claim from the United Kingdom has been deferred.